

SECTION 00700
GENERAL CONDITIONS

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ARTICLE 1 - DEFINITION OF TERMS

1.1 Definition of Terms

A. Wherever in the Bid or Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be as follows:

1. **Acceptance** - Formal written acceptance by the Owner of the completed Work.
2. **Addenda** - Written interpretations of and/or revisions to the Bid Documents issued by the Owner prior to opening of Bids.
3. **Award** - Award by the Owner of a Contract.
4. **Bid** - Offer of the Bidder for the Work when submitted on the prescribed Bid Form, properly signed, dated, and guaranteed, and which includes the schedule of bid items.
5. **Bid Documents** - Documents provided by the Owner for the purpose of soliciting Bids for the Work. Bid Documents will include, as applicable, Standard Specifications, Contract Specifications, Contract Drawings, MBTA Geotechnical Data Reports, Bid Form, and Addenda.
6. **Bid Form or Form for Bid** - Forms issued by the Owner requesting bids for a specific Contract and includes the Notice to Bidders, Instructions to Bidders, and Form for Bid.
7. **Bid Security (Bid Guaranty)** - The cash, cashier's or treasurer's check, certified check, or Bidder's Bond accompanying the Bid submitted by the Bidder, as a guaranty that the Bidder will enter into a Contract with the Owner for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to the Bidder.
8. **Bidder** - An individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work on the prescribed Bid Form.
9. **Change Order** - A document executed and issued to the contractor by the Owner amending the contract. A Change Order (CO) can result in a change to the Contract terms and conditions, special provisions, specifications, drawings and/or increase or decrease in the Contract Price and/or Contract Time. The term Risk Reallocation may be used in circumstances where it is synonymous with Change Order.
10. **Commonwealth** - Commonwealth of Massachusetts.
11. **Contract** - The written agreement executed by the Owner and the Contractor, setting forth the obligations of the Parties including any and all change orders executed by the Owner.

12. Contract Bonds

- a. *Performance Bond* - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the contract to ensure the faithful performance of the contract.
 - b. *Labor and Materials Payment Bond* - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the Contract to ensure the payment of labor, materials, and rental of equipment.
13. **Contract Documents** - The Standard Specifications, Contract Specifications, Bid, and Contract Drawings revised to incorporate all changes made during the Bid period by Addenda and to incorporate information included in the Bid accepted by the Owner and all authorized changes to the Contract issued subsequent to the execution of the Contract.
14. **Contract Drawings** - Plans, profiles, typical cross sections, general cross sections, elevations, and details list as referenced on the Drawing Index, or amendments thereto, and working drawings and approved shop drawings, all of which show locations, character, dimensions, and details of the Work.
15. **Contract Item** - A specifically described unit of work for which a price is provided in the Contract.
16. **Contract Milestone** - Event specified in the Contract Documents for substantial completion, for final acceptance of the work, or for completion of a separate and distinct portion of the Work.
17. **Contract Specifications** - Documents issued by the Owner for the intended Work which includes the Notice to Bidders, Instructions to Bidders, Bid Form, Contract Forms, Contract Bond Forms, Supplementary Conditions, technical specifications, and other requirements, forms and exhibits identified therein.
18. **Contract Time** - Number of calendar days allowed or specified date(s) for completion of a Contract Milestone, as measured from the date specified for the commencement of the Contract Time in the Owner's Notice to Proceed, or if no such date is specified, as measured from the date on which the Contractor receives the Owner's Notice to Proceed. The date of final acceptance is established based on the number of days allowed for completion of the Work.
19. **Contractor** - The individual, firm, partnership, corporation, or combination thereof including joint ventures, which, as an independent contractor, has entered into a Contract with the Owner, and who is referred to throughout the Contract Documents by singular number.
20. **Days** - Every day shown on the calendar, Saturdays, Sundays, and holidays included.
21. **Defective Work** - Work which is unsatisfactory, deficient, or damaged, does not conform to the Contract Documents, or does not meet the requirements of an inspection, test, or approval, or Work associated with Punch List items which the Contractor fails to complete within a reasonable time after issuance of the Punch List by the Owner.

- 22.**Designer** - Firm retained by the Owner as the Owner's design consultant on the project.
- 23.**Dispute** - Any claim, dispute, disagreement or controversy between the Contractor and Owner concerning their respective rights and obligations under the Contract Documents.
- 24.**Engineer** - The individual, acting directly or through a representative, acting within the scope of the particular duties designated in the Notice To Proceed, Notice To Award, or other appropriate document, to decide questions discussed in Article 4.8A, subject to review only pursuant to the provisions in Massachusetts General Laws Chapter 30, Section 39J.
- 25.**Extra Work** - Work which is not included in the Contract as awarded but found to be necessary for the satisfactory completion of the Contract within its intended scope and bears a reasonable subsidiary relation to the full execution of the Work originally described in the Contract.
- 26.**Final Acceptance** - The specific date when the remaining punch list items after Substantial Completion and any other items required by the Contract Documents have been completed or corrected to the satisfaction of the Owner, and if required by the Contract, ready for the intended use by the Owner.
- 27.**Force Majeure** - Acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters. The Contractor's sole remedy for any delay that occurs due to Force Majeure shall be a time extension.
- 28.**General Manager** - Shall be the Chief Executive Officer of the Owner, and shall have general direction, supervision and control of the conduct of the business, property, personnel and affairs of the Owner except as may be otherwise prescribed by law or by the regulations of the Board of Directors.
- 29.**General Terms** - Wherever the words "required," "determined," "directed," "specified," "authorized," "ordered," "given," "designated," "considered necessary," "deemed necessary," "permitted," "reserved," "suspended," "established approval," "approved," "disapproved," "acceptable," "unacceptable," "suitable," "accepted," "satisfactory," "unsatisfactory," "sufficient," "insufficient," "rejected," "condemned," or words of like import are used, they shall be understood to imply "by the Engineer" or "to the Engineer," unless the context clearly indicates a different meaning.
- 30.**MBTA Transit System** - Owner Transit System, including right-of-way, pavement, tracks, facilities, structures, equipment, appurtenances, and other property of the Owner.
- 31.**Notice to Bidders** - That portion of the Bid which advertises for Bids for a specific Contract. Notice to Bidders will indicate time and place for submitting and for opening of Bids, location of the Work, a brief description of the Work to be provided, and bid security required.

- 32.**Notice to Proceed** - Written notice from the Owner to the Contractor to proceed with the Work.
- 33.**Owner** - Massachusetts Bay Transportation Authority, created by Chapter 563, Section 18 of the Acts of 1964, of the Commonwealth, the party of the first part to the contract.
- 34.**Project** - That specific portion of the MBTA Transit System indicated in the Contract Documents.
- 35.**Reference** - Where reference is made in the Contract Documents to publications or standards issued by associations or societies, the intent shall be to specify the current edition of such publications or standards in effect on the date of the contract advertisement or issuance of appropriate addenda, notwithstanding any reference to a particular date.
- 36.**Risk Allowance** - An allowance of contingency funds which is included in a line item in the Contract. The use of this allowance is solely at the discretion of the Owner and will be authorized only through execution of a Risk Reallocation.
- 37.**Risk Reallocation** - A document executed and issued to the Contractor by the Owner amending the Contract and reallocating funds from or to the Risk Allowance line item within the Contract without changing the contract value. All Risk Reallocations will be processed in the same manner as Change Orders are processed in accordance with the Owner's most recent manual or guidelines applicable to construction contractor Change Orders. All provisions contained in the Contract applicable to Change Orders shall also apply to Risk Reallocations.
- 38.**Shop Drawings and Submittals** - Any supplementary drawings or similar data which the Contractor is required to submit for approval, including but not necessarily limited to erection, formwork, and formwork drawings; dewatering; bending diagrams and bar schedules for reinforcing steel; calculations; and manufacturers' catalog information and data.
- 39.**Subcontractor** - The individual, firm, partnership, corporation, vendor, supplier, or combination thereof to whom the Contractor, with written approval of the Owner, sublets any part of the contract.
- 40.**Substantial Completion** - Either that the work required by the contract has been completed except for work having a contract price of less than one per cent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.
- 41.**Supplementary Conditions** - Supplements and additions to the General Conditions.
- 42.**Surety** - Corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the Work, and who executed the Contract Bonds.

43. **U.S. Department of Transportation (DOT)** - Secretary of the U.S. Department of Transportation, and other person authorized to perform the functions of that office, including representatives of the Federal Transportation Administration (FTA).
44. **Value Engineering** - The systematic application of recognized techniques which identify the function of a product or service and provide the necessary function or service reliably at lower overall cost.
45. **Work** - All the construction, materials, equipment, and contractual requirements as specified, shown, or indicated in the Contract Documents, including all alterations, amendments, or extensions thereto made by authorized changes.
46. **Work Directive** - An order in writing issued by the Owner directing the Contractor to perform work which may or may not be Extra Work. The Work Directive shall set forth the work to be done, and if it is known to be Extra Work, shall also include the basis of payment and time adjustments, if any. Following the issuance of a Work Directive, a Change Order shall be executed to amend the Contract Documents if the Work Directive results in a change to the scope or the duration of the Contract.

ARTICLE 2 - CONTRACTOR'S RESPONSIBILITIES

2.1 Safety Requirements

- A. The MBTA is committed to safety on its Projects. The Contractor is primarily responsible for safety and should refer to the specification for Construction Safety for any and all matters related to safety and items such as drug and alcohol testing.

2.2 Archeological and Paleontological Salvage

- A. The Contractor's attention is directed to the United States Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 7, Chapter 7, Section 4, subject "Archeological and Paleontological Salvage", incorporating Policy and Procedure Memorandum 20-7, dated March 31, 1979, and to the Commonwealth of Massachusetts, Acts of 1973, Chapter 1155.
- B. In compliance with these procedures and legislation, the Contractor shall exercise special care during Contractor's operations to avoid injury to underground prehistoric and historic archaeological remains or paleontological remains. Should any archaeological or paleontological remains be encountered during any phase of construction, the Contractor shall immediately suspend all work in the area and shall notify the Owner. The Owner shall immediately notify the State Archaeologist and the Massachusetts Historical Commission. All construction work in that area will be temporarily in abeyance while the State Archaeologist and representatives of Massachusetts Historical Commission inspect the site to determine the importance of the discovery. Areas of prehistorical, historical, or paleontological

significance shall be carefully protected in accordance with the above referenced manual and shall not be disturbed by the Contractor until so directed by the Owner.

- C. Contractor shall receive no extra compensation for such special care, unless said compensation is authorized in writing by the Engineer as provided for in the - Measurement and Payment specification. Material from such areas shall be carefully protected, and if necessary to remove specimens, the Contractor shall do so only at the Owner's direction, and after an authorized agent has witnessed or otherwise referenced their locations.

2.3 Warranty of the Work

- A. For a period of time beginning upon Substantial Completion, unless Owner accepts and uses prior to Substantial Completion, and ending 365 days thereafter, the Contractor warrants to the Owner that the Work performed and material and equipment supplied and/or installed under the Contract conforms to all Contract Document requirements, all requirements imposed by law or regulation, and that the workmanship and material and equipment supplied and installed is free from defect. The Contractor shall repair or replace, at the sole option of, and at no cost to the Owner, any Work, material and equipment found to be defective within said warranty period. Repair or replacement shall include the cost of removal and reinstallation and all Work incidental to such removal and reinstallation. The Warranty obligations in this Paragraph A. shall be supplemental and independent to all applicable manufacturers' warranties.
- B. The Contractor agrees that this warranty, and all of the obligations Contractor is subject to thereunder, shall apply also to the performance of Work, and the supply and/or installation of material and equipment under the Contract by Subcontractors, Vendors and Suppliers, of whatever tier, as fully as if the Contractor had directly performed said Work, and directly supplied and/or installed said material and equipment.
- C. The Contractor further agrees that this warranty, and all of the obligations Contractor is subject to thereunder, shall also apply to all material and equipment supplied by the Owner and installed under the Contract by the Contractor and/or Subcontractors, Vendors and Suppliers, of whatever tier.
- D. The Contractor agrees that it shall be responsible for and respond to any incident giving rise to a warranty obligation under the Contract regardless of who actually performed the Work and/or supplied or installed the material and equipment related to the incident giving rise to such warranty obligation.
- E. If the Contractor fails to repair or replace defective Work, materials, and equipment when requested, and as directed by the Owner, the Owner may, at its sole discretion, have such defective Work, materials and equipment repaired or replaced by others, and charge the cost of such repair or replacement, including the cost of removal and reinstallation, and all Work incidental to such removal and reinstallation, to the Contractor. Such costs shall be deducted from monies due, or which may become due, under the Contract to the Contractor from the Owner. After Substantial Completion, if Contractor is not due additional money from the

Owner, Contractor agrees to pay such costs to the Owner within 30 days after demand for such payment has been made.

- F. All warranties obtained or to be obtained under this Contract by the Contractor, Subcontractors, Manufacturers, Vendors and Suppliers of whatever tier, shall be transferred, at no additional cost, to the Owner. The Contractor shall have responsibility for the transfer of all aforesaid warranties.
- G. The Contractor agrees that the Owner's remedies under this Section are in addition to, and not a limitation of any other remedy available to the Owner under the Contract and at law.

2.4 Cooperation by Contractor

- A. The Contractor shall have one copy of the Contract Documents on the work site and available for reference at all times during the prosecution of the Work.
- B. The Contractor shall ascertain that the materials and workmanship are in accordance with the Contract Documents. The Contractor shall preserve baseline monuments, benchmarks, and other controls for the Work.
- C. The Contractor shall carry on its work such that representatives of Utility Owners, State, or Municipal Departments may enter on the work site without interference to make changes in their facilities which may be affected by the Work. The Contractor shall have no claim for compensation which may be due to or result from work of Utility Owners, State or Municipal Departments. Nothing contained herein shall be construed to hold the Contractor responsible for any acts or omissions by such Utility Owners, State or Municipal Departments, or their contractors.
- D. The Contractor is responsible for providing two (2) week look ahead schedules, submittal logs, RFI logs and change issue logs at each bi-weekly meeting. At a minimum, the topics discussed at each bi-weekly meeting shall include safety issues, status of RFI's, submittals and change orders, outstanding non-conformance reports, issues involving operations, community and/or a municipality, old and new business. The Contractor is responsible for maintaining up to date schedules at all times. The Contractor is responsible for attendance and participation in pre-construction and progress meetings with the Owner. These meetings address all project issues including safety and schedule. The Contractor may be responsible to attend additional special meetings that may be necessary to resolve issues of an immediate or short term nature that cannot wait until the regularly scheduled progress meetings.
- E. The Contractor shall provide all cutting, fitting, and patching of the work that may be required to make its several parts fit together properly, and shall not endanger any work by cutting, excavating, or otherwise altering the work or any part thereof.
- F. Contractor shall cooperate fully with Owner in any investigation relating in any way to the work and issues that arise on site including investigations undertaken by the Owner based on allegations initially made by the Contractor.

2.5 Project Management System

- A. This section specifies e-Builder, a comprehensive Project Management Information System that shall be used for managing documents, communications, and costs for

the contract / project. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information. The MBTA is in the process of implementing e-Builder on an enterprise level and functionality will be rolled out in a phased approach. See E-Builder Project Management System Requirements for e-builder requirements.

2.6 Relations with Railroad and Responsibility for Damage to Railroad/Positive Train Control (PTC) Requirements

- A. Provisions in these General Conditions, which require the Contractor to protect property against damage, and which place upon the Contractor all responsibility for damage to property, injury to persons, and loss, expense, and delay to the owners of property and others, shall also apply to railway lines or railroads, their tenants, licenses, and utility companies which jointly own or use facilities with a railroad company (hereinafter collectively and severally referred to as "Railroad"), the same as in connection with other kinds of property.
- B. General and special requirements concerning the Contractor's relations with Railroad will be set forth in the Supplementary Conditions. The Contractor shall conform to those requirements in the conduct of its work under the Contract.
- C. The Contractor shall be solely and directly responsible to the owners and operators of such properties for any damage, injury, expense, loss, or delay which may result from the carrying out of the work to be done under the Contract. Any extension of time granted the Contractor in which to complete the Contract shall not relieve Contractor or their surety from this responsibility.
- D. If any of the Work required to be done by the Contractor may obstruct the tracks of a Railroad or in any way endanger the operation of its trains, the Chief Engineer of the Railroad may require the services of a flagman or flagmen or other railroad protective personnel for the protection of the property and traffic of the Railroad against hazards capable of being caused by the Contractor.
- E. The MBTA Positive Train Control System (PTC System) has several critical elements that require preservation and protection if work is to be performed near these elements. These elements include:
 - 1. Fiber optic ground-based communications network
 - 2. Radio-based communications network
 - 3. Signal system infrastructure
 - 4. Wayside track-mounted transponders
- F. The elements listed above work together to provide PTC and shall not be impacted or disturbed unless formal written plans and procedures for managing this impact are signed-off by MBTA Capital Programs and Railroad Operations Departments and the MBTA PTC Program.
- G. All MBTA Commuter Rail property contains PTC equipment which includes aerial and buried fiber optic cable on MBTA property, transponders attached to the ties between the rails, and radio antennas and equipment housings at various locations along the tracks usually in conjunction with other railroad signal equipment. There

is also a PTC fiber optic cable located along the Orange Line between North Station and Oak Grove and in the Porter Square Red Line Station head house.

- H. The integrity (physical configuration, operational state and power utility services provided for) of this PTC System must be maintained throughout the Project in order to avoid impacts to operation of the MBTA's PTC System. The Contractor shall not perform any work on the PTC System and shall take proper precautions to avoid disturbing or corrupting the PTC System.
- I. In addition, even if a project does not impact the PTC equipment directly, any change (temporary or permanent) to the configuration of the railroad infrastructure will require changes to the PTC System such as updating of LIDAR mapping, updating the Safety Server, revisions to dispatch software, PTC system retesting, and the installation possibly of new transponders and removal of construction zone transponders. Examples of changes include track relocations / additions / removals, new / removed / altered bridges (both overhead and undergrade), changes in the location or limits of station platforms, changes in authorized train speed, installation or removal of turnouts, modifications to grade crossings, and changes to the signal system. Any work required to be done to or affecting the PTC System shall be coordinated through the MBTA Capital Programs and Railroad Operations Departments and performed by the MBTA's PTC Program Contractor at the MBTA's direction.
- J. Any unplanned interruption of the PTC System is not permitted under any circumstances. Any work on the PTC System, outages or changes required to facilitate the Work shall be planned in advance per the following requirements to ensure that there will be no adverse effects to the PTC System.
- K. Should the Contractor find it necessary that portions of the PTC System be relocated, replaced or otherwise affected, the Contractor shall comply with the following requirements:
 - 1. If the Contractor's work has the potential to affect the PTC System or if the Contractor's work requires the relocation or replacement of the PTC System or the performance of any other work on the PTC System, the Contractor must provide written notice to the MBTA 60 days prior to the expected date of performance of such work. The Contractor shall submit a formal written plan describing the activity in sufficient detail for the MBTA to effectively evaluate the request and to make the necessary arrangements for the work to be performed. The Contractor shall meet with the MBTA and its PTC Program Contractor as needed to coordinate the work. An agreement must be reached between the Contractor and the MBTA Capital Programs and Railroad Operations Departments and the MBTA PTC Program regarding the proposed planned PTC System interruption before any work affecting the PTC system can begin.
 - 2. Emergency Restoration: In the event of an unplanned break or damage to the PTC System during construction, the Contractor shall immediately stop work and notify the MBTA per subsection 3. below. Emergency splicing or repair shall be performed by the PTC Program Contractor.
 - 3. Emergency Notification: Contractor shall stop work and immediately notify the MBTA should the fiber cable or any other part of the PTC System be damaged.

If there is no MBTA project representative on-site any occurrence shall be immediately reported to the MBTA Radio Room and the MBTA PTC Program (Deputy Program Manager, Field Oversight). Upon restoration of the fiber cable to service, the Contractor shall employ corrective actions accepted by the MBTA in order to prevent reoccurrence of any cable damage.

2.7 Use of Explosives

- A. Explosives, when necessary for use in the Work, shall not be brought within the Contract limits or onto property under the jurisdiction of the Owner, without the prior approval of the Owner.
- B. Explosives shall be stored safely under lock and key. The storage places shall be marked conspicuously DANGEROUS EXPLOSIVES and be in the care of a competent watchman at all times. Storage, handling, and use of explosives shall conform to the regulations of the Massachusetts Department of Public Safety, federal regulations and local ordinances relating thereto.
- C. The Contractor shall be responsible for all damages resulting from the use of explosives. The Contractor shall exercise care not to endanger life and property, including new Work. When directed, the number and size of the charges shall be reduced. Flagmen shall be provided, when directed, to warn and keep traffic from the danger area. All persons within the danger area shall be warned and given time to withdraw.
- D. Prior to start of the blasting, the Contractor shall give at least a 48-hour notice and a schedule of Contractor's operations thereof to the operating official, company, or companies leasing, owning, or responsible for pipes, conduits, poles, wires, railroad tracks, or any other public or private utility which may be endangered by the blasting in order that a representative of said owner or lessee may be present at the site. The Contractor shall take proper precautions to prevent injury to said properties during all blasting operations.
- E. Special care shall be exercised during blasting operations to avoid injury to underground structures and utilities.

2.8 Character of Workers, Methods, and Equipment

- A. The Contractor shall at all times employ sufficient labor and equipment to prosecute the several classes of work to full completion in the manner and time required by the Contract Documents.
- B. Prior to starting Work the Contractor shall designate in writing the name, title, qualifications, and experience of his proposed representative who, upon approval by the Owner, shall have complete authority to represent and to act for the Contractor. The authorized representative or a substitute acceptable to the Owner shall be present at the work site at all times while work is actually in progress on the Project. Arrangements for responsible supervision acceptable to the Owner shall be made for emergency work which may be required. The Contractor shall notify the Owner, in writing, of any proposed change of its representative, and shall provide identical information for approval of the new representative.

- C. All workers shall have sufficient skill and experience to perform the Work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.
- D. Any person employed by the Contractor or by any subcontractor who, in the Owner's judgment, does not perform the work in a proper and skilled manner or is intemperate or disorderly or otherwise unsatisfactory, shall at the written request of the Owner, be removed by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Owner.
- E. The Contractor fail to take the necessary action to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner may stop the Work by written notice until such orders are complied with. Contractor shall have no claim against Owner for any notice issued by the Owner pursuant to this Paragraph E.
- F. The Contractor shall employ engineers registered in the Commonwealth of Massachusetts, qualified superintendents, foremen, and other supervisory employees to plan all construction operations and to represent the Contractor at all of the several parts of the Work and they shall be present at all times while the Work entrusted to them is in progress and shall be informed thoroughly regarding the Work.
- G. All equipment used on the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to the transit system, city streets, highways, or adjacent property will result from its use.
- H. When methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor may use any methods or equipment that demonstrate to the satisfaction of the Owner the ability to accomplish the Work in conformity with the requirements of the Contract.
- I. When the Contract Documents specify the methods and equipment by which the construction shall be performed, such methods and equipment shall be used unless otherwise authorized in writing by the Owner. If the Contractor desires to use a method or type of equipment other than that specified, such authority should be requested in writing from the Owner. The request shall include a full description of the methods and equipment proposed to be used as an explanation of the reasons for desiring to make the change. If written approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with the Contract requirements. If after trial use of the substituted methods or equipment, the Owner determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient Work and replace it with Work of specified quality or take such other corrective action as the Owner may direct. No changes will be made in basis of

payment for the construction items involved nor in Contract time as a result of authorizing a change in methods or equipment under these provisions.

J. Prior to the Contractor's selection of the job superintendent, a detailed resume must be submitted to the Owner for approval. Included in the job superintendent's requirements are:

1. Commonwealth of Massachusetts Department of Public Safety License for Construction Supervisor without any restrictions.
2. A minimum of 10 years of related construction experience

The above requirements may only be waived by the Engineer.

2.9 Contractor's Charge and Care for the Work

- A. Until final written acceptance of the Work, the Contractor shall have the charge and care of the Work. The Contractor shall take every necessary precaution against injury or damage to the Work by action of the elements, or from any other cause, whether arising from the execution or the non-execution of the Work, and especially when blasting is to be done.
- B. Except as provided in Article 5.5, the Contractor shall bear all losses resulting from or due to the amount or the character of the work or because the nature of the land in or on which the Work is done is different from that which was estimated or expected, or due to bad weather or other causes.
- C. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and final acceptance, and all bear the expense thereof, except damage to the Work due to war, whether or not declared civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, to "Acts of God" (e.g. hurricane, flood, tornado, cyclone, and earthquake as classified by the United States Weather Bureau for the particular locality and for the particular season of the year and in addition thereto, damages resulting directly from flooding from any of the aforementioned "Acts of God"). The repair of such damages shall be done by the Contractor and, to the extent not covered by insurance, paid for at the respective Contract unit prices for the quantity and items of Work involved. In any case in which the estimate for replacing such Work or repairing such damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to the foregoing, or an "Act of God" combined with any previously authorized Extra Work results in a change of such magnitude as to be incompatible with competitive bid status, the Owner reserves the right to terminate the Contract and to call for new bids and award a new Contract for such Work. In the event a Contract is terminated for such reason, the Owner will pay the Contractor such sum as may be due for Work performed up to the date of the "Act of God", or of damage directly due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing and will also take over and pay for any material stored at the site of the Work provided said material was intended to be and could have been incorporated into the Work; the Owner will also take over and pay for any material which was being especially fabricated for incorporation into the

Work, provided, however, that as a condition precedent to the Owner's liability for such material, the Contractor is legally liable therefore and the material was intended to be and could have been incorporated in the Work

- D. Issuance of an estimate on any part of the Work done will not be construed as final acceptance of any Work completed up to that time.
- E. Should the Contractor fail to take prompt action whenever conditions make it necessary, the Owner will make emergency repairs or cause the same to be made, with the stipulation that the costs for such repairs shall be charged against the Contractor and deducted from monies due the Contractor.
- F. In case of suspension of Work from any cause whatsoever, the Contractor shall be responsible for the Contract and shall take such precautions as may be necessary to prevent damage to the Work, provide suitable drainage and shall erect any necessary temporary structures, signs, or other facilities. The Contractor shall also maintain in an acceptable growing condition all living material in newly established plantings, seeding, and sodding furnished under the Work, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

2.10 Protection and Restoration of Property

- A. The Contractor shall, at no additional expense to the Owner, preserve and protect from injury all property either public or private along and adjacent to the proposed Work. The Contractor shall be responsible for and shall repair at no additional expense to the Owner any and all damage and injury thereto, arising out of or in consequence of any act or omission, neglect or misconduct in the execution of the Work, or in consequence of the non-execution thereof by the Contractor or its employees or subcontractors in the performance of the Work covered by the Contract prior to completion and acceptance thereof. The Contractor shall be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with its operations. The Contractor shall be liable for any claims that may be made on account of the felling of trees or the deposit of debris of any kind upon private property.
- B. Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of public or private utilities of Contractor's intention to commence operations affecting such utilities at least seventy-two hours, exclusive of Saturdays, Sundays, and legal holidays in advance of the start of such operations in accordance with Chapter 82, Section 40A of the General Laws of the Commonwealth, as amended. The Contractor shall, at the same time, file a copy of said notice with the Owner.
- C. Although the Contract Drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the Work, accuracy and completeness of the information is not guaranteed by the Owner. Before commencing any work or operations which may endanger or damage subsurface structures, the Contractor shall carefully locate all such structures and conduct Contractor's operations in such manner as to avoid damage thereto. When necessary, the Contractor shall cooperate with representatives of public service and utility companies in order to avoid damage to their structures by furnishing and erecting suitable supports,

props, shoring, or other means of protection. The Contractor shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made safe and secure.

- D. If the Contractor desires to temporarily relocate a utility, other than those contemplated by the Owner, Contractor shall make the necessary arrangement with the appropriate utility company and make reimbursement for the cost thereof at no additional expense to the Owner.
- E. Access to fire hydrants and fire alarm boxes shall be maintained by the Contractor throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear of obstructions and kept visible at all times. If visibility cannot be maintained, the Contractor shall provide clearly visible signs and lights showing the locations of fire hydrants, fire alarm boxes, or standpipe connections. Utility companies and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all times for inspection and repair.
- F. Land monuments and property marks shall be carefully protected by the Contractor and if necessary to remove and replace the same, Contractor shall do so only at the Owner's direction and after an authorized agent has witnessed or otherwise referenced their location.
- G. The Contractor shall protect and preserve natural surroundings and roadside growth either within or adjacent to the project site from damage or injury due to these operations. The Contractor shall not, except by written permission of the Owner, remove, destroy, or trim roadside trees or shrubs. Trees or landscape features carelessly scarred or damaged by the Contractor's operations shall be removed and replaced or neatly trimmed and restored to their original condition as required by the Owner. The Contractor shall be responsible for all damage to roadside growth due to its operations and shall, without compensation, satisfactorily repair or replace all such damaged growth. Scars on trees shall be painted as soon as possible with an approved tree paint.
- H. The Contractor shall protect existing structures, shall provide lights and fences and take all other precautions that may be necessary to protect life and property. The Contractor shall carry on all operations and use equipment of such types that noise resulting from construction operations will be kept to a minimum. Barriers and bridges shall be provided for the protection and use of the public and for the protection of the Work as necessary. The Contractor shall provide and maintain access for occupant and customer entrance to and exit from all adjacent buildings and property at all times. All temporary facilities required for the general protection of the public and the Work shall be subject to approval of the Owner.
- I. Prior to commencing Work, the Contractor shall record the existing condition of abutting property. The Contractor shall obtain the necessary permission for entry and cause a detailed examination to be made of such abutting property as the Contractor deems necessary, as required in the Supplementary Conditions, or as directed by the Owner. The Contractor shall invite the abutting property owner, in writing or by registered mail, to be present during the examination. A representative of the abutting property owner shall also be invited. A complete report of the existing conditions, including photographs, if required, shall be made

in triplicate, and signed by the Contractor. One copy shall be delivered to the Owner, one to the abutting property owner, and one shall be retained by the Contractor. If at any time thereafter a claim for damages or alleged damages is filed by the abutting property owner or tenant, the Contractor shall make further detailed examinations. A representative of the Owner will be invited to attend. All facts as to changes between the then existing conditions of said property and those which existed at the time of the original examination shall be noted and recorded in-triplicate. One copy of this report shall be delivered to the abutting property owner, one to the Owner, and one shall be retained by the Contractor.

1. In the event that the Contractor cannot obtain from the owner of such abutting property permission to enter upon the property for such examination, the Contractor shall immediately notify the Owner.
 2. For these detailed examinations, the Contractor shall employ an independent person who has had previous experience in examining or surveying the conditions of the property and who shall be approved by the Owner.
- J. The Contractor shall conform to all requirements of this Article and shall serve written notice to all Utility Owners or officials and to all others concerned with or having charge of public or private-owned utilities, of its intention to commence operations affecting such utilities at least one week in advance of the beginning of such operations. The Contractor shall at the same time file a copy of said notices with the Owner.
- K. The Contractor shall confine its movements and operations insofar as possible to the area within the limits of the Work, and the area outside the limits of the Work shall not be disturbed except as directed.

2.11 Contractor Maintenance of Records (MGL Chapter 30, Section 39R)

- A. Attention is directed to Chapter 30, Section 39R(a) - (e) which states as follows. Pursuant to Chapter 30, Section 39R(a), the words defined below shall have the meaning stated whenever they appear in this subsection:
1. "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Section 39M of Chapter 30.
 2. "Contract" means any contract awarded or executed pursuant to Section 39M of Chapter 30.
 3. "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
 4. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of this person's residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the

relationships existing in connection with the filing of reports with the awarding authority.

5. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

6. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which she has made and sets forth her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefore shall be stated. An accountants report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.

7. "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.

8. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

B. Subsection A.2. hereof notwithstanding, every agreement or contract awarded or executed pursuant to Section 39M of Chapter 30 shall provide that:

1. The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor, and
2. until the expiration of six years after final payment, the awarding authority, office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the Contractor or of its subcontractors that directly pertain to, and involve transactions relating to, the Contractor or its subcontractors, and
3. if the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes, and
4. if the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in paragraph C. below prior to the execution of the contract, and

5. if the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph D. below.
- C. Every Contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:
1. transactions are executed in accordance with management's general and specific authorization;
 2. transactions are recorded as necessary
 - a. to permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - b. to maintain accountability for assets;
 3. access to assets is permitted only in accordance with management's general or specific authorization; and
 4. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.
- D. Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that she has, examined the statement of management on internal accounting controls, and expressing an opinion as to:
1. whether the representations of management in response to this paragraph and paragraph B. above are consistent with the result of management's evaluation of the system of internal accounting controls; and
 2. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- E. Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the awarding authority during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.
- F. The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of Chapter 30A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations, and guidelines may be applicable to all awarding authorities. A Contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to Section 44C of Chapter 149.

- G. The record retention aspects of this subsection apply to all contracts awarded by the Authority regardless of value. The requirements relative to the internal auditing and management controls, including the filing of an annual statement, apply to contracts awarded with a value greater than \$100,000.

2.12 Confidentiality

- A. Certain information contained in these Contract Documents is deemed by the Owner to be sensitive to the Owner's operating system. The Contractor agrees that the Contract Documents are provided solely for use by the Contractor and its employees, consultants, suppliers and subcontractors in the performance of Work under these Contract Documents. The information contained herein, and such information, drawings, submittals and the like, developed by the Contractor, or by those employed by the Contractor in the performance of the Work, or such other information subsequently provided to the Contractor by the Owner related to the Work, is, to the maximum extent permitted by law, confidential and shall be treated and protected accordingly. Contractor shall disseminate this information only to those entities which have a "need to know" solely in connection with the performance of the Work under this Contract and will make the minimum number of copies available to others as is necessary to perform the Work.
- B. The Contractor shall inform its employees, consultants, suppliers and subcontractors of the sensitive and confidential nature of the information contained herein and (i) shall obtain from them their verbal acknowledgement that they understand the sensitive and confidential nature of such information; and (ii) that they agree to keep such information confidential. In the event that any employee, consultant, supplier or subcontractor refuses to provide such verbal acknowledgement, or fails to keep such information confidential, such person shall be denied access to the site and shall not be permitted to perform any Work under the Contract Documents, and the Contractor shall replace such employee, consultant, supplier or subcontractor at no additional cost to the Owner.

2.13 Requirement to Submit a Monthly Invoice

- A. The Contractor shall submit a monthly invoice for work performed within the last 45 day period consistent with the requirements of the MBTA Invoicing Procedures.

ARTICLE 3 - CONTROL OF MATERIALS

3.1 Trade Names and Alternatives - "Or Equal"

- A. An item equal to that named or described in the specifications may be furnished by the Contractor, and the naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item will be considered equal to the item so named or described if:
1. it is at least equal in quality, durability, appearance, strength, safety, reliability, operability, maintainability, and design;

2. it will perform at least equally the function imposed by the general design for the Work being contracted for; and
 3. it conforms substantially, even with deviations to the detailed requirements for the item specified.
- B. For each item of material, the specifications shall provide for either a minimum of three brands of material or a description of material which can be met by a minimum of three manufacturers or producers and for the equal of any one of said named or described materials.
 - C. Burden of proof as to the quality and suitability of alternatives shall be upon the Contractor. The Contractor shall furnish, in writing, all information necessary as required by the Owner at no additional cost to the Owner. Requests for review of alternative materials will not be accepted by the Owner from anyone other than the Contractor. The Engineer will be the sole judge as to the quality and suitability of alternative materials.
 - D. Information furnished shall state whether or not acceptance of the alternative material for use in the Work will require a change in the Contract Drawings or Specifications to adapt the design to the alternative and whether or not incorporation or use of the alternative in connection with the Work is subject to payment of any license fee or royalty. The Owner does not pay license fees or royalties. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or changes will be considered in evaluating the suitability of the alternative material.
 - E. No tests nor action relating to the approval of alternative materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work, but such request need not be made less than 30 days after receipt of Notice to Proceed.
 - F. Whenever classification, rating, or other certification by a body, such as UL, NEMA, or AREA, is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements.
 - G. The Contractor shall pay costs of testing required to prove equality of the material proposed.
 - H. Approval of an alternative material shall be only for the characteristics or use named in such approval and shall not be used to change or modify any Contract requirement, or to establish a basis for subsequent approval for material to be used on any other phase of the Work of the Massachusetts Bay Transportation Authority Transit System.

3.2 Certification of Compliance

- A. The use of certain materials on the basis of a notarized certificate of compliance may be allowed based on a certificate of compliance when required by the technical specifications or under the following conditions: Before such materials are incorporated into the Work, the Contractor shall submit to the Owner, for

approval, copies of the manufacturer's or supplier's statement for each kind of such material furnished. The statement shall contain the following information:

1. Contract to which the material is consigned;
 2. Name of the Contractor to which the material is supplied;
 3. Kind of material supplied;
 4. Quantity of material represented by the certificate;
 5. Means of identifying the consignment, such as label, marking, seal number, etc.;
 6. Date and method of shipment;
 7. Statement to the effect that the material has been tested and found in conformity with the pertinent parts of the Contract;
 8. Results of all required tests including the chemical analysis in the case of metal; or in lieu of furnishing the results a statement that the results of all required tests pertinent to the certificate and not submitted shall be maintained available by the undersigned for a period of not less than 3 years from date of final acceptance;
 9. Signature of a person having legal authority to bind the supplier.
- B. If the Contractor has new materials purchased for use on a previous Owner contract which have never been used and which comply with the Contract Documents, these materials may be furnished and installed in the Work provided the Contractor submits its own sworn statement certifying that such materials were purchased for use on a previous contract (name and identifying such contract) and that certificates of compliance were furnished for such materials on the previous contract, to which reference can be made.
1. Costs involved in furnishing the certificates shall be borne by the Contractor.
 2. Materials used on the basis of a certificate of compliance may be sampled and tested at any time. The fact that material is used on the basis of a certificate of compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and Specifications and any such material not conforming to such requirements will be subject to rejection, whether in place or not.
 3. The Owner reserves the right to refuse to permit the use of materials.
- C. Certification of specification compliance shall be furnished for all materials and installation of the same as specified throughout the construction specifications.

3.3 Owner-Furnished Materials

- A. Materials specified to be furnished by the Owner will be available at locations designated in the Contract Specifications or, if not so designated, they will be delivered to the Work site. Owner-furnished materials shall be stored and transported to the place of use by the Contractor, including all necessary loading and unloading. The Contractor's costs of transporting, storing, handling, and installing Owner furnished material to be furnished shall be considered as included in the Contract price paid for the Item involving such Owner-furnished material.
- B. Contractor shall be responsible for all materials furnished to Contractor and shall pay all demurrage and storage charges as a result of its failure to take delivery of Owner-furnished material. The Contractor shall be liable to the Owner for the cost

of replacing or repairing Owner-furnished material lost or damaged from any cause whatsoever after receipt by the Contractor. The costs will be deducted from any monies due or to become due the Contractor, except those amounts when covered under any claims' payments made under insurance policies furnished by the Owner.

3.4 Defective Materials

- A. Contractor furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work unless otherwise permitted by the Owner. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by the Owner. If the Contractor fails to comply promptly with a request by the Owner, made under the provisions of this Article, the Owner may cause the removal and replacement of rejected material and the cost thereof will be deducted from any moneys due or to become due the Contractor.

3.5 Asbestos Materials

- A. Contractor shall not furnish or install asbestos or any material containing asbestos under this Contract.

3.6 Lead Paint Materials

- A. Lead Paints: Contractor shall not furnish or install lead containing paint on any surfaces within the limits of this Contract. A lead containing paint is defined by the Consumer Product Safety Commission's Paint Poisoning Prevention Act of 1979 as any coating whose dried film contains greater than 0.06% by weight of lead.

3.7 Disposal of Materials outside the Work Site

- A. Unless otherwise specified in the Contract Specifications, the Contractor shall make its own arrangements for disposing of waste and excess materials outside the work site at no additional expense to the Owner.
- B. Prior to disposing of material outside the Work site, the Contractor shall obtain written permission from the property owner on whose property the disposal is to be made. The Contractor shall file with the Owner the permit, or a certified copy thereof, together with a written release from the property owner absolving the Owner from any and all responsibility in connection with the disposal of material on said property.

ARTICLE 4 - OWNER'S RIGHTS

4.1 Intent of the Contract

- A. Intent of the Contract is to provide for the construction and completion in every detail of the Work. The Contractor shall complete the Work to the satisfaction of the Engineer at the prices set forth and agreed upon. Where portions of the Work are described in general terms, but not in complete detail, the best general

practice shall be followed. Only materials and workmanship of best standard quality shall be used. The Contractor shall, unless otherwise specified, furnish all labor, superintendence, materials, tools, equipment and incidentals necessary to complete the Work in a proper, thorough, and workmanlike manner.

4.2 Contract Drawings

- A. Contract Drawings showing the general arrangement and such details as necessary to give a comprehensive idea of the construction contemplated will be furnished by the Owner. As work progresses, the Contract Drawings may be supplemented as required to amplify or control the work. The Contractor shall perform the work required by such supplements without additional compensation, except as provided by the Contract.

4.3 Conformity with Drawings and Specifications

- A. Attention is directed to Chapter 30, Section 39I of the General Laws of the Commonwealth which provides that, "Every contractor having a contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the commonwealth, or of any political subdivision thereof, shall perform all the work required by such contract in conformity with the plans and specifications contained therein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the [owner] or by the engineer or architect in charge of the work who is duly authorized by the [owner] to approve such deviations. In order to avoid delays in the prosecution of the work required by such contract such deviation from the plans or specifications may be authorized by a written order of the [owner] or such engineer or architect so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the contracting agency and the contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the [owner]. Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for."
- B. All work provided and all materials furnished shall be in conformity with the lines, grades, cross sections, dimensions, details, gradations, physical, and chemical characteristics of materials and other specific requirements of the Contract. Where the terms "in conformity with" "in agreement with" "in compliance with" or terms of like exactness occur in the Contract Documents, they shall be understood to imply "in reasonable close conformity with".

- C. Where definite tolerances are specified in the Contract, such tolerances shall fix the limits of conformity. Where tolerances are not specified in the Contract, the Owner will determine the limits of conformity in each individual case and such determination shall be final and conclusive and mutually accepted by all parties.
- D. If materials or the finished product in which the materials are used are not within conformity with the Contract Documents, but acceptable work has been produced, the Owner will make a determination whether the work shall be accepted and remain in place. The Owner will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such work or materials as the Owner deems necessary to conform to its determination based on engineering judgment, and in accordance with current construction practices.
- E. If the Owner finds the materials, or the finished product in which the materials are used or the work provided, are not in conformity with the Contract Documents and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor and at no additional expense to the Owner.
- F. Deviations from the Contract Drawings and approved Shop Drawings, that may be required during the course of the construction, will be determined by the Owner and authorized in writing.

4.4 Coordination of Contract Drawings, Contract Specifications, and Standard Specifications/ Order of Precedence

- A. Contract Drawings (including Authority Standards as may be referenced therein), Contract Specifications, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In the event of any discrepancy between a Drawing and figures written thereon, the figures, unless obviously incorrect, are to govern over scaled dimensions. Contract Drawings will govern over Contract Specifications. Where work is to be accepted by a municipality, railroad, or utility company, the Reference Utility Standards which apply to their materials and workmanship will govern.
- B. The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers such an error or omission, the Owner shall be notified immediately. The Owner will then make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract.

4.5 Subletting or Assignment of Contract

- A. The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under control.
- B. The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of the Contractor's right, title, or interest therein, without written consent of the Owner. No subcontracts, or transfer of

contract, shall in any case release the Contractor from liability under the Contract and bonds.

- C. Consent to sublet any part of the Work shall not be construed to be an approval of the said subcontract or of any of its terms but shall operate only as an approval of the making of a subcontract between the Contractor and subcontractor. A subcontractor, vendor, or supplier will be recognized only in the capacity of an agent of the Contractor.
- D. As soon as practicable after execution of the Contract, the Contractor shall submit to the Owner applications for approval of subcontractors for any part of the Work that it proposes to sublet. The Owner has the discretion to accept or reject any proposed subcontractor. In addition to stating the name and address of the proposed subcontractor each application shall give the items, or any portions thereof, proposed to be sublet by item number and description, and the total value of the Work proposed to be sublet based on the primary contract unit prices where established or, where not established, on the approved breakdown estimate of a lump sum price required under the applicable Division I provision for measurement and payment, and not on the amount of the subcontract. The application shall also show other pertinent information in order to enable the Owner to ascertain whether the proposed subcontractor is reliable and able to perform the work.
- E. The Contractor shall direct the attention of subcontractors to the requirements of:
 - 1. Article 7.1 regarding insurance, and also to the Minimum Wage Rates and Health and Welfare and Pensions Fund Contributions as determined by the Commission of Labor and Industries of the Commonwealth and also to the provisions of Article 8.12 and 8.14; and:
 - 2. Chapter 30, General Laws of the Commonwealth, Section 39L, requires under 1. above that the Commonwealth and every county, city, town, district, board, commission shall not enter into a contract for such Work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such Work, a foreign corporation which has not filed with the Owner a certificate of the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance. Chapter 181, Section 3, requires foreign corporations to appoint the Secretary of the Commonwealth as an attorney for service of process, and Section 5, Chapter 181, requires foreign corporations to file certain documents with the Secretary of State which will permit them to do business in Massachusetts.
- F. The Contractor shall direct the attention of subcontractors and of all suppliers of material to the requirements of Article 4.10, and the specification for Quality Assurance, regarding facilities for the Engineer and their inspectors.

4.6 Adjacent Contracts

- A. The Owner reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract. The intent of this Article is to provide for the cooperation of contractors where the Owner deems it expedient or necessary and in the best interest of the Owner to let separate contracts for the performance of other work on or near the location of the Work

being performed under the Contract, but it is not intended to indicate an intention on the part of the Owner to let separate contracts for work within the scope of or necessary for the successful completion of the Contract.

- B. When separate contracts are let within the limits of any one project (either prior to Award of Contract, as specified in the Bid, or as specified above), each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.
- C. Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project. No allowance of any kind will be made except as provided in Article 6.2.
- D. The Contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same Project. The Contractor shall join the work with that of others in an acceptable manner and perform the work in proper sequence to that of others.

4.7 Line and Grade

- A. The Owner will establish primary control for the Work, both horizontal and vertical. The Owner will provide the Contract or Project centerline and such benchmarks and basic tie-in points on or near the construction site as in its judgment are necessary for the proper control of the Work. Monuments, stakes, and marks set by the Owner shall be preserved by the Contractor. If such monuments, stakes, or marks are destroyed or damaged, they may be replaced by the Owner. The Contractor will be charged the cost of replacing monuments, stakes, or marks destroyed or damaged by reason of its operations. The replacement cost will be deducted from payment for the Work.
- B. The Contractor shall proceed from the controls established by the Owner to make all surveys and layouts necessary to conform all of the work to the requirements of the Contract Documents; shall provide qualified engineering and other personnel for the purpose; and shall be solely responsible for the accuracy of the line and grade features of its Work.
- C. The Owner will make such checks, as necessary, of the control work established by the Contractor as the Work progresses. The Contractor will be informed of results of such checks but the Owner by so doing will in no way relieve the Contractor of responsibility for accuracy of the Contract control. The Contractor shall provide such assistance as may be required for checking purposes when requested by the Owner.
- D. The Contractor shall notify the Owner a reasonable time in advance of its needs, of the time and place the Contractor plans to provide the Work for which such primary control will be needed. The Owner will furnish the Contractor with such primary lines, grades, and elevations as it deems necessary by such time so as not to delay the Contractor's operations. The Owner, however, will not be held

responsible for any delay resulting from lack of such information if the Contractor fails to notify the Owner sufficiently in advance of the Contractor's needs.

4.8 Finality of Engineer's Determinations

- A. The Engineer shall decide all questions relating to interpretations of the Contract Documents and may alter, and adjust, and approve them when necessary; all questions relating to quality, value, and acceptability of materials to be furnished and work provided or to be provided; all questions relating to payments to the Contractor; all questions relating to progress of the Work and the need for and manner of correcting it; all questions relating to the need for and terms of Extra Work; all questions relating to the Contractor's supervision, control, and direction of the Work and the use of it; and all questions as to the acceptable fulfillment of the Contract by the Contractor. The Contractor agrees that the determination and decision of the Engineer of law or fact is final and conclusive subject to review only if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily is unsupported by substantial evidence, or is based upon error of law, pursuant to the provisions of M.G.L. c 30, Section 39J. The determination and decision of the Engineer, in case any questions arise, is a condition precedent to the right of the Contractor to receive any money hereunder.

4.9 Authority and Duties of Owner's Assistants

- A. The Owner may appoint assistants and representatives. The assistants and representatives are authorized to inspect work and materials, to give directions pertaining to the Work or to the safety and convenience of the public, to approve or reject materials and to make measurements of quantities.
- B. In case of any dispute arising between the Contractor and the Owner's assistants, as to materials furnished or the manner of providing work, the Owner's assistants are authorized to reject materials or to suspend work until the dispute is referred to and decided by the Owner.
- C. Except in an emergency, the Owner's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of these Specifications nor to issue instructions contrary to the Contract Drawings and Specifications.
- D. The Owner's assistants will not act as foremen or perform other duties for the Contractor.

4.10 Inspection of Work

- A. The Contractor shall give prior notice to the Owner when Work on the various items is to be performed by Contractor or its subcontractors. If Work is suspended on any item, prior notice shall be given to the Owner before resumption of such Work. Except in the case of an unforeseen emergency, neither the Contractor nor any subcontractor shall perform any Work requiring inspection at hours other than during the normal workday without prior approval of the Owner. All materials and each part or detail of the Work shall be subject to inspection by the Owner. The Owner shall at all times have access to the Work and be furnished with information

and assistance by the Contractor as required to make a complete and detailed inspection.

- B. The Contractor, if requested by the Owner, shall before acceptance of the Work, remove or uncover such portions of the finished Work as directed. After examination, the Contractor shall restore said work to the standard required by the Contract Documents. Should Work exposed or examined prove accessible, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should Work exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, will be at no additional expense to the Owner.
- C. Any Work done or materials used without authorization by the Owner may be ordered removed and replaced at no additional expense to the Owner.
- D. The Contractor shall furnish written information to the Owner stating the original sources of supply of all materials manufactured away from the Work site. This information shall be furnished at least two weeks (or as otherwise required by the Owner) in advance of the incorporation in the Work of such materials.
- E. When any unit of government or critical subdivision is to pay a portion of the Cost of the Work, its respective representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government or political subdivision a party to this Contract and shall in no way interfere with the rights of either party hereunder.
- F. Inspection of Work shall not relieve the Contractor of any of its obligations to fulfill the requirements of the Contract Documents.
- G. Failure to reject any defective Work or materials shall not in any way prevent later rejection when such defect is discovered, nor obligate the Owner to make final acceptance.

4.11 Removal of Defective or Unauthorized Work

- A. Defective Work shall be promptly remedied, or removed and replaced, notwithstanding that such Work has previously been inspected and approved or estimated for payment. If the Work or any part thereof shall be found defective at any time, the Contractor shall, at no additional expense to the Owner, make good such defect in a satisfactory manner and within the timeframe specified by the owner.
- B. Work performed beyond the lines and grades shown on the Contract Drawings or established by the Owner, and extra Work done without written authorization pursuant to the terms and conditions of this Contract including and Change Order Manual, will be considered unauthorized Work and the Contractor will receive no compensation therefor. If required by the Owner, unauthorized work shall be remedied, removed, or replaced at no additional expense to the Owner.
- C. Upon failure of the Contractor to remedy, remove, or replace defective or unauthorized Work, or to comply promptly with any requirement of the Owner made under this Article 4.11, the Owner may cause defective or unauthorized Work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due to the Contractor.

4.12 Substantial Completion and Final Acceptance

- A. Upon Substantial Completion of the Work, the Contractor shall present, in writing, to the Owner its certification that the Work has been substantially completed. Within 21 days thereafter, the Owner as a result of its inspection of the Work will present to the Contractor either a written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory Work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The Owner may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the Contract completion date, within which the Contractor must achieve substantial completion of the Work. If the Owner fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the 21-day period, the Contractor's certification shall take effect as the Owner's declaration that the Work has been substantially completed.
- B. If the Work or any part thereof is not acceptable to the Owner at the time of the inspection, the Contractor will be notified in writing of the particular defects or parts to be remedied before final acceptance. If the Contractor has not arranged within a period of five days after the date of transmittal of such notice of non-acceptability, to complete the Work as directed by the Owner, the Owner may, without further notice and without in any way affecting the Contract, make such other arrangements as may be considered necessary to insure satisfactory completion of the Contract. The cost of completing such Work will be deducted from any monies due or which may become due to the Contractor under the Contract.
- C. See the Measurement and Payment specification for Final Acceptance and Final Payment.

4.13 Opening Portions of Contract for Operation

- A. Any portion of the Work which is in acceptable condition for operation may be opened for MBTA Transit System operation as directed in writing by the Owner, but such opening for operation shall not be construed as an acceptance of the Work or part thereof, nor shall it act as a waiver of any of the provisions of the Contract Specifications or of the Contract; provided, however, that on such portions of the Contract as are opened for such use, the Contractor shall not be required to assume any expense entailed in maintaining the MBTA Transit System for operation. The Owner will be responsible for maintenance and any damage to the Work caused solely by MBTA Transit System operation on any portion of the Contract which has been opened to operation as stipulated above, and it may order the Contractor to repair or replace such damage, where upon the Contractor shall make such repairs at Contract unit prices so far as the same are applicable, or as Work Directives, if there are no applicable items in the Contract.
- B. If the Contractor is delayed in completing shoulders, drainage structures, or other features of the non-transit system portion of the Work, the Owner may order all or a portion of the non-transit system portion of the Work open to traffic, but in such event the Contractor shall not be relieved of its liability and responsibility during

the period the Work is so opened prior to final acceptance. The Contractor shall conduct the remainder of its construction operations so as to cause the least obstruction to traffic.

4.14 No Waiver or Legal Rights

- A. Owner shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work provided and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the Work or materials do not in fact conform to the Contract. The Owner shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's sureties, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Owner, or any representative of the Owner, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Owner, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the Owner shall also be entitled as of right to writ of injunction against any breach of any of the provisions of the Contract.

ARTICLE 5 - CHANGES IN THE WORK

5.1 General

- A. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the contract, as a result of:
1. Owner changes in the contract drawings and specifications pursuant to Paragraph 5.4;
 2. Differing Site Conditions pursuant to Paragraph 5.5;
 3. Value Engineering pursuant to Paragraph 5.6;
 4. Increased or decreased contract quantities pursuant to Paragraph 5.7.
- B. If the Owner agrees that a change in the work should result in increased compensation to the Contractor, the construction contract shall be modified by a Change Order. If a Change Order cannot be issued prior to the need to commence the work then the Owner shall issue a Work Directive pursuant to paragraph 5.2.

5.2 Work Directives

- A. The construction contract information is supplemented by the Owner's Construction Contractor Change Order Manual. The most recent edition of the Construction Contractor Change Order Manual can be found on the Owner's web site. A link to the Construction Contractor Change Order Manual can be provided

upon request. The Contractor shall submit and the Owner will review change orders and extra work in accordance with the manual.

- B. Extra Work shall be authorized by a change order consistent with Article 5.3. If the extra work needs to commence prior to the execution of a change order, the Owner shall issue a Work Directive. The Contractor shall not commence services for extra work without a Change Order or a Work Directive issued by the Owner.
- C. If the Owner and the Contractor disagree as to whether certain work is within the Contractor's scope or should be considered Extra Work, the Owner shall issue a Work Directive directing the Contractor to proceed and the Contractor reserves its rights to file a dispute in accordance with this Agreement. The Owner may also issue a Work Directive related to a credit change order.

5.3 Change Orders

- A. If the Contractor believes that the changes are of sufficient magnitude as to entitle the Contractor to additional compensation, the Contractor shall request a change order to the Contract. The procedure for submitting a request for a change order pursuant to this Article 5.3 is a two-step process. First, the Contractor must provide an initial written notice including a statement to the Owner of a potential change order pursuant to this Article 5.3 within 14 days after the Contractor knows or should have known of the potential change order or within 14 days of receiving a Work Directive. Such a written statement shall contain a description of the nature of the work provided or damage sustained. Second, within 30 days following the date of the written notice to the Owner, the Contractor shall submit a Cost Proposal consistent with the requirements of the Change Order Manual. Compliance with this Paragraph A. shall be a strict condition precedent. Unless both the Notice and the Cost Proposal are provided within the times set forth in this Paragraph D, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. The Contractor may request in writing an extension of time for submitting a cost proposal. If such extension is granted by the Owner then the cost proposal shall be due on that date.
- B. If the Contractor believes that the changes are of sufficient magnitude as to require additional time to complete the Contract, the Contractor shall submit a Time Impact Analysis (TIA) consistent with the requirements of Article 6 and the construction schedule specifications. If the Contractor is requesting additional compensation and additional time related to the same potential change then the TIA shall be submitted at the same time as the cost proposal. The Contractor shall not submit a cost proposal without submitting the required TIA or submit a TIA without the required cost proposal.
- C. Notice by the Contractor and the keeping of costs by the Owner shall not in any way be construed as proving the validity of the claim.
- D. By submitting a Cost Proposal to the MBTA, the Contractor is certifying that an Authorized Representative(s) has reviewed all costs and pricing data provided by said Company to the Massachusetts Bay Transportation Authority (MBTA) for the purpose of establishing a value for a Change Order and that to the best of their knowledge and having done diligence all cost and pricing are current and accurate

as of the date of its cost submission. This certification includes an affirmation that the Contractor is aware of the Massachusetts and Federal statutes concerning false and/or fraudulent claims and that the Company and its submittal are in full compliance with the requirements of these laws.

- E. Unless specifically noted in the Change Order, Extra Work will not extend the time of completion of the Contract.
- F. Determination of the Engineer will be final upon all questions concerning the amount and value of Extra Work.
- G. Payment for Extra Work will be as provided for in the specification for Measurement and Payment.

5.4 Owner Changes in the Contract Drawings and Specifications

- A. The Owner reserves the right at any time during the progress of the Work to make alterations to, deviations from, additions, to, and deletions from the Contract Drawings and Specifications. Such changes shall not invalidate the Contract nor release the surety. The Contractor agrees to accept the Work as changed, the same as if it had been a part of the original Contract. Such changes will be authorized in writing by the Owner pursuant to the Contractor's Change Order Manual or emergency authorizations.
- B. If an alteration, deviation, addition, or deletion increases or decreases the cost of performance of the Work or requires the Contractor to furnish materials or provide work of a kind not susceptible of classification for payment under any of the items scheduled in the bid, the Contractor may request a change order consistent with Article 5.3 covering the work to be done and the manner and method of payment.
- C. The Contractor shall accept as full compensation for Work except as otherwise provided for in this Article 5, the Contract unit prices stipulated in the Contract for the actual quantity of work provided in an acceptable manner. If the Contract does not include unit prices related to the work, the Owner and the Contractor shall agree on reasonable and acceptable compensation consistent with the terms of the Owner's Construction Contractor Change Order manual.
- D. If an alteration, deviation, addition, or deletion increases or decreases the time of performance of the Work, the Contractor may submit a TIA consistent with Article 5.3 covering the work to be done.
- E. If the Contractor and the Owner disagree on increased or decreased costs, or the time of performance, the Owner may issue a unilateral Change Order pursuant to Article 5.8.

5.5 Differing Site Conditions (MGL Chapter 30, Section 39N)

- A. The Contractor's attention is directed to Chapter 30, Section 39N of the General Laws of the Commonwealth, as amended, which is quoted in Paragraph 1. below:
 - 1. If during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work

affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

B. Filing, investigation, and settlement of all claims made under said Chapter and Section shall be as follows:

1. The Contractor shall promptly and before such conditions are disturbed, notify the Owner in writing describing in full detail the subsurface or latent physical conditions at the site where it is maintained, that conditions differ substantially or materially from those conditions indicated in the Contract Documents. The Owner shall promptly investigate the conditions and shall promptly submit a written report of its findings and determinations to the Contractor, and if it is found that such conditions as have been described in detail by the Contractor do exist and in fact do so differ materially or substantially, an equitable adjustment shall be made and the Contract notified in writing accordingly. No such claim of the Contractor will be allowed unless the Contractor has given the detailed notice specified, or shall it be allowed if such conditions are disturbed prior to their investigation by the Owner.
2. The request for time or money related to a Differing Site Condition shall be consistent with Article 5.3. No adjustment or allowance of any kind except as provided in Article 6.2 will be made to the Contractor due to delay or suspension of the Work or any portion thereof where the actual subsurface or latent physical conditions encountered at the site differ substantially and materially from those indicated in the Contract Documents.
3. No claim will be approved and no adjustment or allowance made when encountering subsurface or latent physical conditions at the site that differ substantially and materially from those indicated in the Contract Documents unless such conditions were in existence at the time of the Award of the Contract.
4. Any dispute concerning a question of fact under the Subsection which is not disposed of by agreement shall be decided by the Engineer.
5. If as provided in (a) of this Subsection an equitable adjustment is to be made or contemplated, the Contractor shall submit promptly in writing to the Owner an itemized statement of the details and amount of work together with its estimated costs for the same and the Owner shall require the Contractor to keep actual costs and certify the same to the Owner in writing.

- C. If the Contractor and the Owner fail to agree on an equitable adjustment to be made under this Article, then the Contractor shall accept as full payment for the Work in dispute an amount determined as provided for the specification for Measurement and Payment.

5.6 Value Engineering (Applicable to Contracts in Excess of \$200,000)

- A. On all contracts in excess of \$200,000, the Contractor may submit value engineering proposals. The proposals shall be based upon a sound engineering study made by the Contractor indicating that the proposal:
1. Will result in a net reduction in the total contract cost to the Owner;
 2. Will not impair any essential form, fit, function, or characteristic of the Work, such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features;
 3. Will not require an unacceptable extension of any contract milestone including the contract completion time;
 4. Will require a Change Order to the Contract; and
 5. Will not involve changes requested to the commercial terms of the Contract, such as, but not limited to, changes in the insurance provisions.
- B. Value Engineering proposals shall be processed in the same manner as prescribed for any contractor initiated proposal which would necessitate issuance of a Change Order. The Contractor shall submit the following information, at a minimum, with each value engineering proposal:
1. A description of the difference between the existing contract requirements and the proposed change, and the comparative advantages and disadvantages of each;
 2. An itemization of the requirements of the Contract which must be changed if the proposal is adopted and a recommendation as how to make such change (e.g., suggested revision);
 3. An estimate of the reduction in contract performance costs that will result from adoption of the proposal, taking into account the cost of implementation by the Contractor (including any amount attributable to subcontracts in accordance with Paragraph E. below and the basis for the estimate).
 4. A statement of the time by which a Change Order must be issued so as to obtain the maximum cost reduction during the remainder of this Contract, noting any effect of the contract delivery schedule.
- C. The Owner will not be liable for any delay in acting upon, or for failure to act upon, any Value Engineering proposal submitted pursuant to this Article. The decision of the Owner as to the acceptance of any such proposal shall be final. The Owner may accept in whole or in part, any proposal submitted pursuant to this Article by issuing a Change Order. Unless and until a Change Order is issued, the Contractor shall remain obligated to perform in accordance with the terms of the Contract.
- D. If a Value Engineering proposal is accepted and applied, an adjustment in the Contract price and in any other affected provisions will be made. The equitable adjustment in the Contract price will be established by determining the total estimated decrease in the Contractor's cost of performance resulting from the

accepted changes, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with Paragraph E. below). The contract price shall be reduced by such total estimated decrease in the cost of performance minus 50 percent of the difference between the amount of such total estimated decrease and any ascertainable collateral costs to the Owner which must reasonably be incurred as a result of application of the cost reduction bid.

- E. The Contractor shall include appropriate value engineering arrangements in any subcontract which, in the judgment of the Contractor, is of such a size and nature as to offer reasonable likelihood of cost reductions. In computing any equitable adjustment in the contract price under this paragraph, the Contractor's cost of implementation of a Value Engineering proposal which is accepted shall include any implementation cost of a Subcontractor and any value engineering incentive payments to a Subcontractor, which clearly pertain to such proposal and which are incurred, paid or accrued in the performance of a subcontract.
- F. The Contractor may restrict the Owner's right to use any portion of the Contractor's proposal by marking it with the following requirement:
 - 1. This data, furnished pursuant to Article 5.6 of the General Conditions of Contract No.____ may not be duplicated, used or disclosed, in whole or in part, for any purpose except for evaluation, unless the proposal is accepted by the Owner. This restriction does not limit the Owner's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. If the proposal is accepted by the Owner, the Owner will have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Owner contract.
 - 2. Contract modifications made as a result of this Article will state that they are made pursuant to it.
- G. Contractor may at any time submit to the Owner for the Owner's review and approval or denial, proposed changes to the Contract Documents which will benefit the Owner. Upon acceptance of the proposed changes, the provisions of this Article (as applicable) shall apply. Denial of a proposed change shall neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.

5.7 Increased or Decreased Contract Quantities

- A. The Contractor shall accept as payment in full, so far as Contract Items are concerned, payment at the original bid contract unit prices for up to 100% of the units in the bid. The Owner may order omitted from the work any items or portions of work. Such omissions shall not operate as a waiver of any conditions of the Contract nor invalidate any of the provisions thereof, nor shall the Contractor have any claim for anticipated profit or overhead.
- B. When the accepted quantities of work reach 75% of the quantities in the Bid Form and the Contractor anticipates that known work will require a quantity of units in excess of the units in the bid, the Contractor shall notify the Owner that additional

quantities of work will be required. The Contractor shall follow the process for Compensation for Altered Quantities and Payment for Extra Work as provided for in the specification for Measurement and Payment and the Change Order Manual.

- C. Except as specified herein, no payment will be made for any increased expenses, loss of expected reimbursement, loss of anticipated profits or loss of overhead absorption, suffered or claimed by the Contractor either directly or indirectly from such increased or decreased quantities or from unbalanced allocation among the Contract Items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursement, or from any other cause.

5.8 Owner Unilateral Action

- A. The Owner may at any time in its sole discretion unilaterally issue a Risk Reallocation or Change Order to Contractor for any purpose relating to work under this Contract, including without limitation to address any disagreement between the parties regarding the scope of cost of the work, or whether the Contractor has performed in accordance with the requirements of the Contract. A unilaterally issued Change Order need not include a consent or acknowledgement by Contractor. Contractor shall proceed immediately as directed in the unilaterally issued Change Order without prejudice to its rights to assert claims for additional compensation or time under Articles 5.3 and 6.2 as applicable.

5.9 MBTA Authority

- A. Only the Board of Directors, General Manager, or their designees, are authorized to approve the award of a contract and issuance of other contract actions in accordance with the Owner's authorization levels approved by the Board of Directors or its designee(s). The General Manager may delegate the approval of contract actions and employees of the Owner are only authorized to request work or authorize work to be performed consistent with MBTA delegated authority. The Owner will not accept any responsibility whatsoever for work performed for which there is no specific proper required authorization.
- B. Pursuant to Section 5.9A. above, the signing or initialing of contractor or subcontractor time and materials (T&M) daily reports by the Owner's employees shall be of no legal significance other than to simply acknowledge that work was performed.

5.10 Resolution of Disputed Changes

- A. Any disputes relating to changes in the work are subject to the terms and conditions of Article 10.

ARTICLE 6 - TIME

6.1 Prosecution of Work

- A. The Contractor shall commence Work upon issuance of a Notice to Proceed unless otherwise ordered in writing by the Owner; and Contractor shall complete the specified milestones by the dates specified in the Supplementary Conditions.

1. In the event the Contractor fails to complete the specified milestones within the days specified, liquidated damages will be assessed for each calendar day of delay in the amounts specified in the Supplementary Conditions.
- B. On or before the date stated in the Supplementary Conditions for completion, or the date to which the time of completion will have been extended under the provisions of Article 6.2, the Work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and the whole of the Contract are to be provided and the Work is to be completed is an essential part of the Contract.
- C. The Owner may withhold monies due to the Contractor, including retainage, in order to secure payment of liquidated damages.
- D. The liquidated damages assessed in accordance with this section and the Supplementary Conditions shall be construed as liquidated damages to compensate the Owner for all additional costs incurred by the Owner as a result of the failure of the Contractor to fully complete said work within the specified milestones, and not as a penalty.
- E. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall not operate as a waiver on the part of the Owner of any of its rights under the Contract.
- F. Should the prosecution of the Work for any reason be discontinued, the Contractor shall notify the Owner at least 24 hours in advance of resuming operations.
- G. If the Owner determines that the rate of progress is not satisfactory, the Owner may instruct the Contractor from time to time to increase the force, equipment, and plant, or any of them, employed on the whole or any part of the Work, stating the amount of increase required to insure the proper and timely completion of the Work. If such lack of progress is due to circumstances caused by the Contractor, such increase shall be at no additional cost to the Owner. If such lack of progress is a result of circumstances not caused by the Contractor and the Owner requests and the Contractor submits and receives approval of a revised Critical Path Method (CPM) Schedule indicating the Work being completed on time, the cost of such increase shall be reimbursed by the Owner.
- H. The Contractor shall not provide work at any time when conditions are unsuitable for its execution, safety, and permanence. This provision shall not be interpreted as constituting any waiver, release or lessening of the Contractor's obligation to bring the Work to entire completion within the Contract time stipulated therefor.
- I. The Contractor shall not receive any additional compensation for the requirements of this Article.

6.2 Determination and Extension of Contract Time for Completion

- A. The Contractor shall complete, entirely, and in an acceptable manner, the Work required under the Contract within the time stated in the Bid Form and Supplementary Conditions, except that the Contract time for completion shall be adjusted as follows:
 1. In case commencement of work is delayed or any part thereof is delayed or suspended by the Owner (except for reasons caused by the fault or neglect of

the Contractor), the Contractor will be granted an extension of time in which to complete the Work or any portion of the Work required under the Contract equivalent to the duration of the delay less a reasonable period of time within which the Contractor could have done necessary preliminary work.

2. When delay occurs due to Force Majeure, the time for completion of the Work shall be extended as determined by the Owner to be equitable. This time extension shall be the Contractor's sole remedy for any delay that occurs due to Force Majeure.
 3. An "Act of God" as used in this Article is understood to imply an earthquake, flood, cyclone, hurricane, tornado or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense of. A rain, windstorm or other natural phenomenon of normal intensity, based on United States Weather Bureau reports, for the particular locality and for the particular season of the year in which the Work is being prosecuted, shall not be construed as an "Act of God" and no extension of time will be granted for delays resulting therefrom. This time extension shall be the Contractor's sole remedy for any delay that occurs due to "An Act of God".
 4. Within the scope of acts of the Government, consideration will be given to properly documented evidence that the Contractor has been delayed in obtaining any material or class of labor because of any assignment of preference ratings by the Federal Government or its agencies to other defense contracts.
 5. Each Change Order as issued will include a statement of additional time, if any, that is agreed upon by the Contractor and the Owner required for the completion of the Contract by reason of this Change Order, and no other time allowance due to the performance of the Work covered by such Change Order will be allowed.
- B. An extension of time will not be granted for any delay or any suspension of the Work due to the fault of the Contractor, nor if a written request for an extension of time on account of delay due to any of the aforesaid causes is not filed within 14 days of the date of the commencement of the delay nor if the request is based on any claim that the Contract period as originally established was inadequate.
- C. Time is of the essence in the performance of this Contract. The Contract period has been carefully considered and has been established for reasons of importance to the Owner. This time limit will be enforced.
- D. The probable slow-down or curtailment of Work during inclement weather and winter months has been taken into consideration in determining the total time required to complete the Contract. No extension of time will be allowed due to this reason.

6.3 Failure to Complete Work on Time

- A. On or before the date stated in the Contract Documents, or the date to which the time of completion will have been extended under the provisions of Article 6.2, the Work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and the whole of the Contract are to be provided and the Work is to be completed is an essential part of the Contract.

- B. See Supplementary Conditions relating to liquidated damages.

6.4 Delay and Suspension of Work

- A. The Owner has the authority to delay the commencement of the Work and delay or suspend any portion thereof, for such period or periods as it may be deemed necessary, because of conditions beyond the control of the Owner or the Contractor, for the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for causes and conditions considered unsuitable for the prosecution of the Work; for acts of third persons not a party to the Contract; or for any other cause, condition, or reason deemed to be in the Owner interest.
- B. Upon receipt of written order of the Owner, the Contractor shall immediately delay the commencement of the Work or delay or suspend any portion thereof in accordance with said order. Work shall not be suspended or delayed without prior written approval or order of the Owner. The work shall be resumed when conditions warrant or deficiencies have been corrected and the conditions of the Contract satisfied as ordered or approved in writing by the Owner. The Contractor's attention is also directed to the requirements provided in the specification for Temporary Controls and Article 2.9 which shall govern during any period of temporary or partial suspension of work.

6.5 Claims for Delay Damages

- A. The Contractor shall have no claim for damages or compensation for additional costs of any kind for or based on delay, hindrance, interference or disruption, or other time-related damages of any kind, including suspension, except as set forth below:
1. When the Owner has determined that there is a critical, excusable, non-concurrent delay caused exclusively by the Owner ("Owner Caused Non-Concurrent Delay") the Contractor shall be awarded delay damages for each day of delay at the rate set forth in the Supplementary Conditions, and subject to paragraphs a. - e. below:
 - a. The Owner will make the determination as to the number of Owner Caused Non-Concurrent days of delay pursuant to its review of the Contractor's Time Impact Analysis ("TIA") as provided for in specification the Construction Schedule & Progress Documentation Section of the Contract Specifications;
 - b. The first 15 days of Owner Caused Non-Concurrent Delay on the Project shall be non-compensable;
 - c. The Contractor shall only recover delay damages for Owner Caused Non-Concurrent Delay through Substantial Completion. There shall be no recoverable delay damages for costs incurred due to delay, hindrance, interference, disruption, or other time-related damages of any kind, including suspension, after Substantial Completion;
 - d. The per day delay damage rate includes a reasonable estimate of the contractor's time dependent costs for on-site laborers, project

management and supervisory costs, superintendent, safety supervisor, schedulers, quality control engineers, site vehicles, site office rental, site office utilities, internet and phone, site office supplies and insurance costs. The estimate does not include home office overhead or profit, or other time related costs, all of which are hereby deemed non-compensable. The per day delay damage rate does not apply to claims submitted pursuant to Article 6.6.

- e. Owner and Contractor agree that delay costs are difficult to prove and ascertain. Owner and Contractor agree that the per day Owner caused delay damages set forth in the Supplementary Conditions are intended as a reasonable estimate of the Contractor's reasonable costs due to compensable delay, and a fair and reasonable alternative to the broad "no damage for delay" clauses typically asserted in Massachusetts public construction contracts. Accordingly, the Contractor expressly agrees that the per day damages set forth in the Supplementary Conditions shall be the Contractor's sole and exclusive remedy for damages or compensation for additional costs of any kind for or based on delay, hindrance, interference, disruption, or other time-related damages of any kind.

6.6 Subcontractor Pass through Claims from Written Suspension Order (M.G.L. Chapter 30, Section 39O)

A. Attention is directed to Section 39O. of Chapter 30 which requires that every contract subject to the provisions of Section 39M of Chapter 30 contain the following provisions 1. and 2. in their entirety and, in the event a suspension, delay, interruption, or failure to act by the Authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of its performance as provisions 1. and 2. give the general contractor against the awarding authority, but nothing in provisions 1. and 2. shall in any way change, modify, or alter any other rights which the general contractor or the subcontractor may have against each other.

1. The awarding authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Authority; provided, however, that if there is a suspension, delay, or interruption for 15 days or more or due to a failure of the awarding authority to act within the time specified in the Contract, the awarding authority will make an adjustment in the contract price for any increase in the cost of the performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority will not make any adjustment in the contract price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provision.
2. The general contractor must submit the amount of a claim under provision 1. to the awarding authority in writing as soon as practicable after the end of the

suspension, delay, interruption, or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

- B. Costs allowed on any claim submitted pursuant to this Article 6.6 shall include the estimated cost of direct labor, materials and use of equipment, plus 10% of this total for overhead, with no profit. Allowable costs on allowed claims shall be limited to increased on-site labor, project management and supervisory costs, equipment costs, labor escalation, material escalation, extended equipment rental, storage and restocking of materials, winter conditions, demobilization, remobilization, workers compensation, employers liability insurance, health, welfare and pension benefits, social security deductions, employment security benefits and fringes per labor agreement on allowable direct costs and bond costs.
- C. Overhead shall not be allowed on any claim submitted pursuant to this Article except for the 10% markup referenced in Paragraph B. above. Non-compensable overhead costs include, but are not limited to, mandatory onsite supervision, company truck and repairs, oil changes, office telephone and internet, project management, administrative costs for monthly requisitions including subcontract requisitions, administrative payroll costs, small tools, manual equipment, extended home office overhead, executive salaries and general conditions.

ARTICLE 7 - INSURANCE AND INDEMNITY

7.1 Insurance Requirements

The Contractor shall carry and maintain insurance of the types set forth below with minimum limits described in the Insurance Tier for the Contract found in the Supplementary Conditions or in some cases, in the provisions below. Such insurance shall be provided throughout the term of this Contract, including any extensions thereof.

- A. **Commercial General Liability:** The Contractor shall carry and maintain Commercial General Liability Insurance covering all operations by or on behalf of the Contractor on an occurrence basis against claims for bodily injury, property damage (including loss of use), personal injury and advertising injury. Terms and conditions for required insurance include:
 - 1. If work is performed within 50 feet of a railroad, ISO endorsement CG 24 17 or its equivalent shall be attached to the policy and noted on the certificate of insurance.
 - 2. Products/Completed Operations shall be maintained for a period of at least six (6) years after completion and acceptance of work and final payment or for the period of the applicable Statute of Repose, whichever is longer. A copy of the endorsement evidencing the 6-year coverage for the Products/Completed Operations shall be provided prior to the start of the Project. Such obligation to provide Products/Completed Operations coverage shall survive any suspension or termination of the Contract.
 - 3. General Liability limits shall apply on a per project and per location basis.

- B. **Automobile Liability:** The Contractor shall carry and maintain Automobile Liability Insurance covering the use of all vehicles; owned, leased, hired and non-owned.
- C. **Worker's Compensation and Employer's Liability:** The Contractor shall carry and maintain Workers' Compensation Insurance, including Employers Liability Insurance covering all work and services performed under the Contract.
1. When work will be performed on or over navigable waters, a Longshore and Harbor Workers' Endorsement (USL&H) shall be provided to cover employees for wages, transportation, maintenance and cure in accordance with applicable laws.
 2. When operations are to be performed upon navigable waterways and barges, Tug Boats, and all other vessels on the ocean and all intra-continental rivers and canals, as well as drivers, divers, and underwater personnel are utilized, a Maritime Coverage Endorsement (Jones Act) shall be provided to cover the seamen, masters and members of a crew in accordance with applicable laws, providing remedy for damage or injury in the course of employment.
- D. **Umbrella Liability:** The Contractor shall carry and maintain an Umbrella Liability Insurance Policy covering all work and services performed under the Contract. Such insurance shall contain no exclusions not contained on the underlying Commercial General Liability or Automobile Liability Policies.
1. Such insurance shall follow the form of underlying insurance terms and conditions. The Umbrella Policy shall identify the Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability Policies on the Schedule of Underlying Policies Endorsement, or its equivalent.
- E. **Professional Liability / Errors & Omissions:** If the Contractor or any applicable subconsultants/ subcontractors shall provide design services, such Contractor or subconsultants/subcontractors shall evidence and maintain at all times, while services contemplated by this Agreement are being completed, and for 6 years after project completion, a policy for professional liability insurance for claims arising from the negligent performance of professional services. However, no such policy of insurance shall relieve the Contractor or any subconsultants/subcontractor of any liability it may have under this Agreement or at law.
- F. **Contractor's Pollution Liability:** The Contractor or the designated Subcontractor shall carry and maintain Pollution Liability Insurance for sudden and accidental and non-sudden and gradual occurrences arising out of the work being performed under this Contract including, but not limited to, all hazardous material identified under this Contract. The terms and conditions for this required insurance shall include the following, as applicable:
1. This coverage may be provided on a claim-made basis.
 2. The Contractor shall designate the disposal site and furnish a Certificate of Insurance from the Disposal Facility for Environmental Impairment Liability Insurance covering liability for sudden and accidental occurrences in the

amount of not less than \$3,000,000 per occurrence and \$6,000,000 aggregate.

3. The Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with endorsement MCS90 for the liability arising out of the transportation of hazardous material with an amount not less than \$5,000,000 annual aggregate.
4. Certificates of Insurance shall clearly state that the hazardous material exposure identified under this Contract is covered under these Pollution Liability Insurance Policies.

G. **Builders Risk:** The Contractor shall purchase and maintain property insurance written on a builders risk "all risk" completed value policy form and sufficient to cover the total value of the Project including materials, equipment, machinery and supplies furnished, existing structures plus subsequent contract modifications, on a replacement cost basis. The insurance required by this clause shall cover direct physical loss or damage from risks of fire, explosion, theft, vandalism, malicious mischief, water damage, mechanical and electrical breakdown, debris removal, collapse, earthquake, flood, windstorm and terrorism. The insurance shall provide coverage for ensuing loss or resulting damage from error, emission, or deficiency in construction methods, design, specifications, workmanship, or materials. The insurance shall provide coverage for loss or damage to false work and temporary structures. The insurance shall also provide coverage for debris removal, including any demolition caused by the enforcement of any legal requirements, transit, off site storage, and soft costs if requested by the MBTA. It shall cover reasonable compensation for consultants', designers' and contractors' services and expenses including claims preparation expenses. The terms and conditions for this required insurance shall include the following, as applicable:

1. Insurance shall be maintained until the Project is placed into its intended use unless otherwise provided in contract documents or agreed in writing by the parties to the contract.
2. Insurance shall include the interests of the MBTA in the Project as a named insured.
3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA.
4. Deductibles and retentions shall be the responsibility of the Contractor

H. **Property:** The contractor shall purchase and maintain property insurance written on an "all risk" basis sufficient to cover the total value of equipment, tools, and materials owned or rented by the Contractor.

I. **Railroad Protective:** If the Contractor, or any of the Contractor's subcontractors shall be performing activities within 50' of the Railroad right-of-way, the Contractor shall furnish broad form Railroad Protective Liability Insurance covering all work performed by the Contractor and all subcontractors under this Contract. The terms and conditions for this required insurance shall include the following, as applicable:

1. The MBTA, the Massachusetts Department of Transportation, and applicable railroads shall be named insured on such insurance policy or policies, as required.
2. Such policies shall provide 30 days-notice to each named insured by the insurance company before any change or cancellation of the policies.
3. The required Railroad Protective Insurance provided herein must be in the form commonly referred to as the ISO RIMA.
4. The Contractor shall furnish to the MBTA a copy of the policy for Railroad Protective Liability upon request. Original policies and certificates shall be completed and sent out to the MBTA, the Massachusetts Department of Transportation, and applicable railroads listed below.

MBTA: Director of Risk Management
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Tel. (617) 222-5054
riskmanagment@mbta.com (e-mail all certificates to this address and clearly label Contract Number in the Description of Operations section)

MassDOT: James Eng
Office of Transportation Planning
Massachusetts Department of Transportation
10 Park Plaza
Rail Division, Suite 4160
Boston, MA 02116

Mass Coastal: General Manager
Massachusetts Coastal Railroad
12 Harding Street
Lakeville, MA 02347
Tel. (508)291-2116

Cape Cod Central Railroad: General Manager
Cape Cod Central Railroad
12 Harding Street
Lakeville, MA 02347
Tel. (508)291-2116

Keolis: Contract Administration
Keolis Commuter Services
470 Atlantic Avenue
Boston, MA 02210
Tel. (617) 849-7977

- J. **Aircraft Liability or Unmanned Aerial Vehicle (UAV a/k/a Drone):** If a UAV or aircraft is to be used by the contractor or is required by the Scope of Work, the Contractor shall obtain Aircraft Liability insurance applicable to liability for bodily injury and/or property damage and invasion of privacy arising out of the ownership, maintenance, occupancy or operation of any owned, hired or non-owned aircraft. The Contractor shall have all licenses and/or certifications required for use in place.
- K. **Marine Liability:** For any work in and around navigable waters, scope dependent insurance requirements for Marine General Liability & Professional Indemnity and/or Marine Umbrella and Bumbershoot coverage may be required by the MBTA.
- L. **Cyber Liability:** If required by the Scope of Work, the Contractor shall carry and maintain Network Security and Privacy Liability, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties. The policy shall contain Data Breach expenses and be payable whether incurred by the MBTA or its designated Cloud/Data Hosting Vendor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services. The policy shall contain an affirmative coverage grant of contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.

M. Additional Requirements for all Insurance:

1. Required insurance shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A-/VII or better.
2. Required insurance shall be placed before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, or longer if required by the terms of the Contract.
3. The MBTA and the Massachusetts Department of Transportation (MA DOT) and its officers, officials, employees and volunteers shall be named as an additional insured for both on-going and completed operations on a primary and non-contributory basis on the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, Aviation and Watercraft Liability Insurance policies and other policies as indicated. The MBTA may require that other entities be named as additional insureds under certain policies, if appropriate.
4. If applicable, the MBTA and the Massachusetts Department of Transportation (MA DOT) shall be a named insured on the Builders' Risk policy and Railroad Protective Policy.
5. Waiver of Subrogation shall apply in favor of the MBTA and Massachusetts Department of Transportation (MA DOT) on the Commercial General Liability, Auto Liability, Workers' Compensation, and if applicable, Umbrella Liability, Pollution Liability, Aviation, Watercraft which precludes these

- insurers from being able to make any subrogation claims against the MBTA or MA DOT.
6. The MBTA shall be given at least 30 days advance written notice in the event of any insurance policy cancellation and a minimum of 10 days-notice for non-payment of any premium.
 7. Prior to the effective date of the Contract, and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with the MBTA named as an additional insured and/or loss payee and evidencing that such insurance policies, including required limits and sub limits, are in place and provide coverage as required. The Scheduled Additional Insured, Waiver of Subrogation, Primary/Non-Contributory and Cancellation Notification Endorsements should be attached to the Certificate of Insurance.
 8. Upon request and at its sole discretion, the MBTA shall be provided with a copy of complete and unredacted policies at any time throughout the term of the Contract.
 9. All required insurance, with the possible exception of Pollution Liability or Professional/Errors & Omissions Insurance, shall be written on an occurrence basis form. Requests to utilize a claim made basis form, with the exception of Pollution Liability and Professional/Errors & Omissions must be submitted and approved by the MBTA.
 10. Required insurance shall include coverage for acts of terrorism certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 and extensions.
 11. Unless specific limits for subcontractors are required by the Contract, the Contractor shall ensure that all subcontractors are properly ensured to cover their operations performed pursuant to the Contract. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors.
 12. Except for Professional Liability, no primary or excel liability follow-form insurance shall provide defense costs that erode the policy limits.
 13. No Commercial General Liability, Automobile Liability or Excess Liability insurance to be maintained by the contractor shall contain (a) any insured-versus-insured cross-liability or cross-claim exclusion or endorsement barring coverage for claims by the MBTA against the contractor or any subcontractors.
 - i. **Asbestos Conditions:** In the event it is determined during excavation or construction that an asbestos condition does exist, a Licensed Asbestos Specialist shall be employed by the Contractor to perform the asbestos containment and abatement work. Prior to asbestos containment and abatement work, the Contractor shall, through the Licensed Asbestos Specialists, obtain insurance in amounts and types specified by the Authority, naming the MBTA and the Massachusetts Department of Transportation as additional insureds as its interest appears under this Contract. Payment for this work will be made as

provided for in the Division 1 - General Requirements and Measurement and Payment.

- ii. **Payment and Performance Bonds:** The MBTA requires the Contractor to provide a performance bond in the form and full amount of the accompanying bid with sureties acceptable to the MBTA. In the event the MBTA requires bonds, the cost of bonds shall be included in the Agreement Sum (bidder must clearly specify)

7.2 Certificate of Insurance Special Instructions

- A. The MBTA has retained the services of DOCUTRAX to ensure Contractor's compliance to agreed contractual terms as they relate to specified Insurance requirements. The Contractor will receive email communications from DOCUTRAX requesting a Certificate of Insurance in accordance with the Insurance Requirements of the contract. The Contractor shall provide a Certificate of Insurance within ten (10) business days from receiving the Notice of Award.
- B. The insurance policies that the Contractor shall carry are outlined in the MBTA Insurance Requirements section of the contract. The Contractor certifies that they will carry such insurance policies and all resulting costs are included in the contract amount.
- C. Certificates of Insurance for policy renewals shall be provided promptly upon request by the MBTA or DOCUTRAX.
- D. The Contractor shall provide the Contact Name and Email of the person responsible for handling Certificates of Insurance.
- E. DOCUTRAX Contact Information

MBTA@docutrax.com

7.3 Patented Devices, Materials, and Processes

- A. It is mutually understood and agreed that, without exception, contract prices are to include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the work. It is the intent that whenever the Contractor is required or desires to use any design, device, material or process covered by letters patent or copyright, the right for such use shall be provided for by suitable legal agreement with the patentee or owners. A copy of this agreement shall be filed with the Owner.
- B. Whether or not such agreement discussed in Paragraph A. above is made or filed as noted, the Contractor shall indemnify and save harmless the Owner and all persons acting for or on behalf of the Owner from all claims and liability of any nature or kind, and all damages, costs and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights on any invention, process, material, equipment, article, or apparatus, or any part thereof, furnished and installed by the Contractor, or arising from or occasioned by the use of manufacture thereof, including their use by the Owner. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, the Contractor, at its expense, shall:

1. Secure for the Owner the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license or licenses; or
 2. Replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes; or
 3. Modify to become non-infringing, or remove the enjoined materials, equipment, devices, or processes and refund the sums paid therefor without prejudice to any other rights of the Owner.
- C. When Federal Funds are involved, patent rights to any patentable result arising out of the Work, as well as all information, designs, specifications, know-how, data, and findings, shall be made available to the Government for public use, unless the Federal Department involved shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be made available.

7.4 Safeguarding of Excavations

- A. Contractor shall provide safeguards and protection around and in the vicinity of excavations necessary to prevent and avoid the occurrence of damage, loss, injury, and death to property, animals, and persons because of such excavations. Liability for any such damage, loss, injury, or death shall rest with the Contractor.

7.5 Indemnity

- A. To the fullest extent permitted by Law, the Contractor, at no expense to Owner, shall indemnify and hold harmless the Owner, including but not limited to its officers, agents and employees, from and against (i) all Claims and all Losses that are in any way connected with, or that arise, or that are alleged to arise, in whole or in part, from the performance of the Work and/or from act(s) or omission(s) by the Contractor and/or its subcontractors, and/or their respective agents, subcontractors, independent contractors and/or anyone directly or indirectly employed by any of them constituting a breach of the Standard of Care, willful or negligent acts, or any breach of contractual obligations by Contractor or any subcontractors, (ii) all claims brought by Subcontractors, agents, consultants or independent contractors, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, and all Losses in connection with such claims, arising out of, or resulting from, or in any manner connected with, the Project; and (iii) any accident or occurrence that takes place, or is alleged to have taken place, in or about the location where the Work is being performed or in the vicinity of that location; provided, however, that the Contractor's obligation to indemnify under this Section shall not apply as to the Owner to the extent that such claims and/or losses are caused by the negligence or willful misconduct of the Owner. The Contractor's indemnification obligations shall not be limited by (1) available insurance or bond proceeds or (2) any limitation on the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability acts or other employee benefit acts.
- B. The Contractor shall indemnify, defend, and save harmless the Owner and all its officers, agents, and employees against all suits, claims, or liability of every name

and nature, for or due to any injuries to persons or damage to property arising out of or in consequence of the acts of the Contractor in the performance of the Work covered by the Contract or failure to comply with the terms and conditions of said Contract, whether by the Contractor or the Contractor's employees or subcontractors.

7.6 Responsibilities for Damage Claims

- A. The Contractor shall be held responsible for any and all claims for damage to underground structures and utilities due to the Contractor's operations or to the operations of any of the Contractor's subcontractors.
- B. If the Contractor is requested but refuses to comply with its obligations under Article 7.5A., then the Contractor shall, in addition to its other obligations, pay the cost of bringing any action to enforce the Contractor's indemnity obligations, including reasonable attorneys' and consultants' fees and expenses, and court costs, to the party requesting indemnity.

ARTICLE 8 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

8.1 Laws to Be Observed

- A. The Contractor shall keep fully informed concerning all requirements of law, including all state and federal laws, county and municipal ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall protect, indemnify and hold harmless the Owner and the Engineer, and all of their officers, agents, and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor, its employees, agents, or subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such requirements of law, the Contractor shall immediately report the facts to the Engineer in writing. The Contract shall be governed by the laws of the Commonwealth.
- B. The Contractor, if a foreign corporation (a corporation established, organized, or chartered under laws other than those of the Commonwealth) shall comply with the provisions of Chapter 156D, Sections 15.01-15.32 of the General Laws as amended. The Contractor shall file with the Owner a certificate of the State Secretary stating that such corporation has complied with Chapter 156D, Sections 15.01-15.32 and the date of such compliance.
- C. Other out-of-state business organizations, such as individual proprietorships, partnerships, and joint ventures, shall appoint an agent in this Commonwealth for the service of legal process and furnish a copy of such appointment to the Secretary of State prior to the issuance of a contract by the Owner.
- D. Work shall be in accordance with the Massachusetts State Building Code.
- E. The Contractor shall protect and indemnify the Owner and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, safety code, regulation, order or decree whether caused by the Contractor, its employees or its subcontractors employed on the Project.

- F. Such laws, ordinances, codes, regulations, orders, or decrees may restrict and limit the Contractor's working hours or use of certain types of equipment on the Project. The Contractor shall become familiar with such restrictions and limitations prior to submitting a Bid.
- G. The Contractor shall give all necessary notices, obtain all permits as required and pay all government taxes, fees, and other costs in connection with the Work. The Contractor shall file all necessary drawings, prepare all documents, and obtain all necessary approvals of all governmental departments which have jurisdiction.
- H. The Contractor shall obtain all required Certificates of Inspection prior to acceptance and final payment for the Work.
- I. Compensation for conforming to all provisions of this Article 8.1, except as may be provided otherwise in Supplementary Conditions, shall be considered as included in the prices for the various Contract Items of Work and no additional compensation will be allowed therefor.

8.2 Permits and Licenses

- A. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes and give all notice necessary and incidental to the due and lawful prosecution of the Work.

8.3 Motor Vehicles

- A. Motor vehicles (except vehicles used solely for transporting employees to and from the Contract location) used wholly or in part within the Commonwealth by the Contractor or a subcontractor, or by a person directly or indirectly employed by them in the execution of the Contract, shall be registered in the Commonwealth and bear Massachusetts registration plates.
- B. Motor vehicles used solely for transporting employees to and from the Contract location shall be registered as required under General Laws, Chapter 90, Section 3, of the Commonwealth, as amended.
- C. A vehicle shall not be driven on any way, as defined in Section 1 of Chapter 90 of the General laws of the Commonwealth, unless it is constructed or loaded so as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on such a way in cleaning or maintaining the same. (General Laws, Chapter 85, Section 30, of the Commonwealth as amended.)
- D. All Diesel Construction Equipment must have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

8.4 Restoration of Surfaces Opened by Permit

- A. Contractor shall not allow any party to make an opening in a street or highway for any purpose except upon the direction of the Owner and the presentation of a duly authorized permit or other instrument. The holder of such a permit or instrument

shall be considered in the same class as a contractor on an adjacent contract, and the provisions of Articles 2.4 and 4.6 shall apply.

8.5 Federal Participation (Applicable only to Contracts where the cost of any portion thereof is paid out of federal finds.)

- A. Attention is directed to the provisions of the Federal Transportation Act of 1964 (U.S. Public Law 88-365), as modified or amended, and any other provisions of law, or amendments thereto whereby such federal participation is authorized, and any regulations properly and lawfully promulgated thereunder, under which the United States shall aid the individual states in the development of efficient and coordinated mass transportation systems. When the United States government is to pay any portion of the cost of the Contract, the above act of Congress provides that the construction work and labor in each State shall be done in accordance with the laws of that State and applicable federal laws. The Work embraced in the Contract will, therefore, be subject to such inspection by representatives of the U.S. Department of Transportation or other such Federal Agency as may be necessary to meet the above requirements. Such inspection shall, however, in no sense make the United States government a party to the Contract and will in no way interfere with the rights of either party hereunder.

8.6 Forest Protection

- A. In the execution of any Work within or adjacent to any State or National forest, park, or other public or private lands, the Contractor shall comply with all of the regulations of the appropriate authorities having jurisdiction over such forest, park, or lands. The Contractor shall keep the areas in its construction operations in an orderly condition and properly dispose of all refuse and discarded materials.
- B. The Contractor shall obtain construction permits which may be required for Contract operations, not a part of the Contract, in accordance with the requirements of the regulations of the appropriate authorities.
- C. The Contractor shall take all reasonable precautions to prevent and suppress open fires in any area involved in its construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing any open forest fires.

8.7 Duty to Limit Interference with Operations

- A. The Contractor shall conduct the Work at all times in such a manner and in such sequence as will assure the least interference with vehicular, marine, and pedestrian traffic, operations of railroads, and existing portions of the MBTA Transit System, and occupant and consumer entrance to and exit from adjacent buildings and property. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic.

8.8 Payment of Taxes

- A. Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by federal, state, or local government, including, without being limited to, federal excise tax.
- B. However, attention is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6 and the Massachusetts Use Tax, Chapter 64I, Section 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in construction projects of the Authority. This exemption is also applicable to rental charges for construction vehicles, equipment, and machinery rented, specifically for use on the site of the Authority's construction projects. Bidders are directed to exclude any allowance for Sales or Use Tax from their Bid Form as said tax would relate to the foregoing specific categories. The Owner can provide the MBTA Sales Tax Exemption Number and appropriate supporting documentation upon request.

8.9 Community Relations

- A. The Contractor shall establish and maintain a continuing liaison with persons residing or doing business in the vicinity of the Project site, for the purpose of minimizing inconveniences resulting from construction, and shall appoint a representative, acceptable to the Owner, for community relations. The representative shall have the authority to act directly, or through the Contractor's approved Superintendent, regarding all valid requests or complaints. Information as to their disposition by the Contractor, shall be furnished to the Owner. The name and telephone number of the Contractor's community relations representative shall be furnished to those residents or businessmen in the community who might reasonably be expected to be affected by the construction.

8.10 Conflict of Interest

- A. It is understood and agreed that no gift, loan, or other thing of value has been or shall be given to any employee, agent, or officer of the Owner in connection with the award or performance of the Contract. Also, no employment shall be given to and no renting, leasing, or purchasing of equipment, supplies, or materials shall be arranged or made with or through any employee, agent, or officer of the Owner by the Contractor.
- B. No Board Member, officer or employee of the Owner, officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, officer, employee or elected official of the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town within the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town authority within the Commonwealth of Massachusetts, during his/her tenure and for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- C. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

8.11 Personal Liability of Authority Officials

- A. In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Owner's employees, the Directors, Engineer, or their authorized representatives, either personally or as officials of the Owner, it being understood that in all such matters they act solely as agents and representatives of the Owner.

8.12 Labor, Lodging, Board, Maximum Hours of Employment, Keeping of Payroll Records

- A. Every employee in public work shall lodge, board, and trade where and with whom the employee elects; and no person or person's agents or employees under contract with the Owner for the doing of public work, shall directly or indirectly require as a condition of employment therein, that the employee shall lodge, board, or trade at a particular place or with a particular person (Chapter 149, Section 25 of the General Laws of the Commonwealth).
- B. No laborer, workman, mechanic, foreman, or inspector working within this Commonwealth, in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be required or permitted to work more than 8 hours in any one day or more than 48 hours in any one week, or more than six days in any one week, except in cases of emergency. The Owner or the Contractor or any subcontractor may employ laborers, workmen, mechanics, foremen, and inspectors for more than 8 hours in any one day in the work to be done or under the Contract when, in the opinion of the Commissioner of Labor and Industries, public necessity so requires. (Chapter 149, Section 34 of the General Laws of the Commonwealth, as amended.)
- C. Upon request of the Owner or the Massachusetts Department of Labor and Industries, the Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said Works, and the hours worked by, and the wages paid to each such employee. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the Work. This requirement shall also apply to the work of any subcontractor, having a subcontract for any of the Work performed on the Contract. Such records shall be kept in such manner as the Commissioner of Labor and Industries shall prescribe and shall be open to inspection by the Engineer or any authorized representative of the Department of Labor and Industries at any reasonable time and as often as may be necessary.
- D. In case the Work covered by the Contract is financed from federal funds, the above provisions relative to the hours of employment shall be subject to such revision and amendment as are required by the Rules and Regulations controlling the expenditures of such federal funds.

8.13 Prevailing Wage

- A. The state Prevailing Minimum Wage Law, M.G.L. Chapter 149, Section 26, et. seq. (hereinafter, the "Mass. Prevailing Wage Law" is herein incorporated by reference. The Contractor acknowledges familiarity with and agrees to comply with all the

relevant provisions of said Mass. Prevailing Minimum Wage Law, including but not limited to the following:

1. to pay the applicable prevailing wage;
 2. to provide payroll records on a weekly basis;
 3. to review such payroll records and certify their contents as compliant with the law and the provisions of this Contract;
 4. to make available any and all documents necessary to an investigation of the Contractor's compliance with this provision, the Contract and the law; and
 5. any additional requirements necessary to ensure conformance with state or federal provisions, the provisions of the Contract and any other provisions required by other appropriate authorities, as directed by the Owner or its authorized agent, including but not limited to submission and certification of a weekly list of transporters of gravel or fill working on the Contract.
- B. In addition to any other remedies that may be available at law, the Owner may increase retainage or withhold, or cause to be withheld, from any monies payable under any contract between Contractor and the Owner, such sums as may be necessary to satisfy any liability, or reasonably anticipated liabilities of the Contractor, or of any of the Contractor's subcontractors, suppliers or vendors, of any tier, for unpaid wages, liquidated damages, potential fines and penalties, legal fees and any other potential costs incurred by the Owner or its agents, related to a determination of non-compliance with or enforcement of the Mass. Prevailing Minimum Wage Law, the Davis-Bacon Act, or any other such State or Federal labor or wage provisions, or other applicable provisions of this Contract. Such withholding may be adjusted accordingly once the actual amount of such liability under applicable indemnifications and liability provisions is determined and/or satisfied.

8.14 Equal Opportunity

- A. During the performance of the Contract, the Contractor agrees as follows:
1. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, sexual orientation, gender identity or pregnancy. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, sex, national origin, sexual orientation, gender identity or pregnancy. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
 2. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment, without regard to race, creed,

color, religion, sex, national origin, sexual orientation, gender identity or pregnancy.

3. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's non-compliance with the non-discrimination clauses of the Contract or with any of the said rules, regulations or orders, the Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor shall include the portion of the sentence immediately preceding paragraph 1. and the provisions of paragraphs 1. through 7. in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Applicable Massachusetts and Federal Anti-Discrimination Requirements are contained in the Appendix to the Bid Conditions, Affirmative Action Requirements, Equal Employment Opportunity of the Supplementary Conditions.

8.15 Claims against Contractor for Payment of Labor and Materials

A. Attention is directed to Chapter 30, Section 39F(a) - (h) which states that:

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1. Forthwith after the Contractor receives payment for a periodic estimate, the Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
2. Not later than the sixty-fifth day after each subcontractor substantially completes its work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Owner will pay that amount to the Contractor. The Contractor shall forthwith pay to the subcontractor the full amount received from the Owner less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
3. Each payment made by the Owner to the Contractor pursuant to subparagraphs 1. and 2. of this Article for the labor performed and the materials furnished by a subcontractor shall be made to the Contractor for the account of that subcontractor; and the Owner will take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the Owner has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the subcontractor as provided in subparagraphs 1. and 2, the Owner shall act upon the demand as provided in this Article.
4. If, within 70 days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the Contractor the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of Work, the subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within 10 days after the subcontractor has delivered or so mailed the demand to the Owner and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Owner and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the subcontractor.

5. Within 15 days after receipt of the demand by the Owner, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Owner will make direct payment to the subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount (1) retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of work, (2) specified in any court proceedings barring such payment, or (3) disputed by the Contractor in the sworn reply; provided, that the Owner will not deduct from a direct payment any amount as provided in part (3) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph 4. The Owner will make further direct payment to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (1) and (2) of this subparagraph.
6. The Owner will forthwith deposit the amount deducted from a direct payment as provided in part (3) of subparagraph 5. in an interest-bearing joint account in the names of the Contractor and the subcontractor in a bank in Massachusetts selected by the Owner or agreed upon by the Contractor and the subcontractor and shall notify the Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.
7. All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph 6, shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later became payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments will discharge the obligation of the Owner to the Contractor to the extent of such payment.
8. The Owner shall deduct from payments to the Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph 6, are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.
9. Subcontractor, for contracts awarded as provided in paragraph (a) of Section Thirty-Nine M, Chapter Thirty shall mean a person approved by the Owner in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

ARTICLE 9 - TERMINATION AND SUPPLEMENTATION OF WORK

9.1 Termination of Contract for Cause

- A. The Owner may terminate the Contract for cause, pursuant to the procedures set forth in Paragraph B., on the grounds set forth below:
1. If the Contractor shall be adjudged bankrupt or make a general assignment for the benefit of creditors, or in the case of a joint venture, if any firm that has an ownership interest in the joint venture shall be adjudged bankrupt, shall make a general assignment for the benefit of creditors or the Owner determines that the remaining partners in the joint venture are no longer qualified to perform the work.
 2. If a receiver shall be appointed of the Contractor's property or in the case of a joint venture, if a receiver shall be appointed of any firm that has an ownership interest in the joint venture;
 3. If the work to be done under the Contract shall be abandoned;
 4. If the Contract or any part thereof shall be sublet without the previous written consent of the Owner, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified;
 5. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 6. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 7. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
 8. Is guilty of substantial breach of a provision of the Contract Documents; or
 9. At any time, the Engineer certifies in writing to the Owner that the Work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract.
- B. If the Owner intends to terminate the contract for cause pursuant to Paragraph A. above, the Owner shall provide seven (7) days written notice to Contractor. If the Contractor does not cure the breach within said seven (7) day period, the Contract shall be terminated for cause by written notice from Engineer to Contractor instructing the Contractor to discontinue the Work, or any part thereof, and thereupon the Contractor shall discontinue such Work or such part thereof, as the Owner may designate, and the Owner will require the surety or sureties to complete the Contract pursuant to the terms of the performance bond.
- C. All costs incurred by the Owner for the completion of the remaining Work, as a result of the termination of the Contractor under this Section, may be paid by the Owner out of any monies then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting the Owner shall not be held to obtain the lowest cost for the completion of the Work or any part thereof, or for insuring its proper completion. If the costs for the completion of the work are less than the sum which would have been payable under the Contract if the Work had been completed by the Contractor, the Contractor shall be entitled to receive the difference; and in case such costs exceed the said sum, the Contractor shall pay the amount of the excess to the Owner upon completion of the work.
- D. If after said termination for cause, it is determined by a court that the Contractor was not in default under the Contract, the rights and obligations of the Contractor

and the Owner shall be the same as if said termination had been issued for the convenience of the Owner under Article 9.3.

- E. The rights and remedies of the Owner under this Section are in addition to any other rights and remedies provided by law or under this Contract.
- F. The rights and remedies set forth in this paragraph are independent of the Owner's rights and remedies to declare a default under the terms of the Performance Bond furnished for the project. The terms and conditions of the Contractor's Performance Bond shall remain in full force and effect.

9.2 Supplementation of Work

- A. If the Owner determines that the rate of progress is not satisfactory, the Owner, instead of notifying the Contractor to discontinue the Work or any part thereof, may instruct the Contractor from time to time to increase the force, equipment, and plant, or any of them, employed on the whole or any part of the Work, stating the amount of increase required; and unless the Contractor shall, within five working days after any such notice, increase such force, equipment, and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the Work or such part thereof or until the conditions as to the rate of progress shall, in the Owner's judgment, be fulfilled; or unless the Contractor submits and receives approval of a revised CPM indicating the Work being completed on time, the Owner may employ and direct the labors of such additional force, equipment, and plant as may, in the Owner's judgment, be necessary to insure the completion of the Work or such part thereof within the time specified, or at the earliest possible date thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Owner to the Contractor, to increase the force, equipment, or plant, nor the employment of additional force, equipment, or plant by the Owner shall be held to prevent a subsequent notice from the Owner to the Contractor to discontinue Work under the provisions of Article 9.1.
- B. The Owner may exercise the rights under this paragraph to rectify adverse conditions described in Article 4.11, Removal of Defective or Unauthorized Work, and Article 3.4, Defective Materials, and notify the Contractor's bonding company to take the necessary appropriate action to remedy the situation. It shall be understood that when the Owner exercises its rights hereinbefore described, the breach of Contract by the Contractor does not itself constitute termination unless stipulated by the Owner. The Contractor shall, as directed by the Owner, continue other works of the Contract.
- C. All expenses charged under this Article will be deducted and paid by the Owner out of any monies then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting, the Owner will not be held to obtain the lowest figures for the Work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefore shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor

shall pay the amount of the excess to the Owner upon completion of the Work without further demand being made therefor.

9.3 Termination for Convenience

- A. If the Owner determines that it is in the Owner's interest to do so, the Owner may notify the Contractor to discontinue all work, or any part thereof, such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Owner may designate.
- B. If the Owner notifies the Contractor to discontinue all work, or any part thereof, the Owner shall pay and the Contractor shall accept, as full payment for all work done and materials provided, the following sums:
 - 1. For all completed items of work for which there are unit prices provided in the contract.
 - a. The original contract unit prices.
 - 2. For all work on partially completed items.
 - a. A sum agreed to by the Contractor and the Owner or:
 - i. The actual costs for direct labor, materials (less salvage value, if any) and use of equipment, plus 10% of this total for overhead; and
 - ii. the actual cost for Workmen's Compensation and Employer's Liability, Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; and
 - iii. 6 percent of the total of (a) and (b) for profit and;
 - iv. the estimated proportionate cost of surety bonds; and
 - v. the actual cost to the Contractor for work performed by a Subcontractor, plus 10 percent of such cost. No allowance shall be made for general superintendence and the use of small tools and manual equipment,
 - 3. The Contractor shall not be paid and the Contractor shall not have any claims for loss of anticipated profits, for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all, work or from unbalanced allocation, among the contract item, of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor or for any other cause. The Contractor shall incorporate the provisions of this section as provisions in its contracts with each of its subcontractors.
 - 4. The Contractor shall make reasonably diligent efforts to mitigate costs.

ARTICLE 10 - DISPUTE RESOLUTION

10.1 Applicability

- A. The purpose of this Article 10 ("Dispute Resolution Provisions") is to provide a structured approach for the Parties to resolve disputes consistent with the Contract Documents and without incurring unreasonable administrative time and costs. Contractor and Owner agree to use their best efforts to resolve covered disputes using good faith negotiations, the principles of cooperation and the processes set forth in this Article 10.

10.2 Mandatory Nature of Process

- A. If Contractor does not adhere strictly to the requirements of the Dispute Resolution Provisions with respect to any covered Dispute, then Contractor shall be deemed to have waived all rights, claims and remedies based on or relating to the subject matter of such Dispute.
- B. Participation in and completion of the dispute resolution process in accordance with the Dispute Resolution Provisions are conditions precedent to the Contractor's commencement of a legal action against the Owner.

10.3 Informal Resolution

- A. As a condition precedent to mediation pursuant to Article 10.4, or to litigation, for all disputes between Owner and Contractor arising out of or related to the Contract, in which the total amount in controversy between the Owner and Contractor is \$100,000 or more, the Owner and the Contractor intend to resolve all disputes under this Contract to the best of their abilities in an informal manner pursuant to this Article 10.3.
- B. For all disputes between the Owner and Contractor arising out of or related to the Contract in which the amount in dispute is \$100,000 or more, upon written request from a party, the Owner's Director, or their designees, shall meet in good faith with the Contractor's project level personnel, or their designees, to attempt to resolve or narrow the dispute ("first level dispute resolution meeting"). The first level dispute resolution meeting shall take place within fourteen (14) days after the receipt of a written request for a meeting, or such additional time jointly agreed upon by all parties. The first level dispute resolution meeting can take place virtually.
- C. If despite the use of good faith efforts, the Owner and Contractor are unable to resolve the dispute at the first level dispute resolution meeting, then upon written request from a party, the Owner's Chief, or their designees, shall meet with the Contractor's principal, or their designees, in a final attempt to resolve the matter in good faith ("final dispute resolution meeting"). The final dispute resolution meeting shall take place within thirty (30) days after the conclusion of the first level dispute resolution meeting, or such additional time jointly agreed upon by all parties and can take place virtually.
- D. If the parties cannot resolve the dispute at the final dispute resolution meeting, the parties can mediate eligible disputes pursuant to Article 10.4 below or proceed with litigation.

10.4 Mediation

- A. All Disputes between Owner and Contractor arising out of or related to the Contract in which the total amount in controversy between the Owner and Contractor is \$1,000,000 or more shall be subject to mediation as a condition precedent to litigation.
- B. The Contractor and Owner can voluntarily agree to mediate pursuant to the terms and conditions of this Article 10.4 on disputes involving an amount in controversy of less than \$1,000,000.

- C. The Parties shall endeavor to agree on a mediator. If the Parties are unable to agree on a mediator, the mediation shall be administered by the American Arbitration Association under the Construction Industry Mediation Procedures in effect as of the Effective Date.
- D. Upon selection of a mediator, the Parties shall enter into a written mediation agreement. The mediation agreement must be in writing, signed by the Parties, and contain the scope, process and terms (including inadmissibility) and timing of the mediation. Any mediation pursuant to this Article 10.4 shall not exceed one (1) full day, inclusive of pre-mediation sessions, unless the parties agree otherwise. The Owner and Contractor shall share the costs of mediation. The mediation can take place virtually by agreement of the Owner and Contractor, but otherwise shall take place in Boston, Massachusetts.

10.5 Forum, Choice of Law

- A. Contractor agrees that the exclusive jurisdiction and venue for any lawsuit, at law or in equity, arising out of or relating to the Contract or the Project, shall be the Superior Court Department of the Commonwealth of Massachusetts in Suffolk County. Contractor consents to such jurisdiction and venue regardless of the Contractor's residence or domicile. If the Contractor is a partnership or joint venture, each of its partners and/or members binds itself to and agrees and consents to the jurisdiction and venue provisions of this Section 10.5.